



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT GARSEN

SUCCESSION CAUSE NO. 45 OF 2016

IN THE MATTER OF THE ESTATE OF JAMES NJANE GICHIMU (DECEASED)

Coram: Hon. Justice R. Nyakundi

Kaluki Muriu Ndiritu advocates for the Petitioner

Orina advocate for the Objector

RULING

In this case on 16.10.2016, **Christopher Gichimu Nyane** petitioned for grant of Letters of Administration in the matter of the **Estate of James Njane Gichimu** who died on 8.7.1998. further **Magdalene Nyokabi Njane** the wife to the deceased and **Marion Nyambura Njane** have duly filed their consent to the proposed petition for grant of Letters of Administration to Christopher **Gichimu Njane**.

Against the above petition, is an objection to the making of the grant in favour of **Christopher Gichimu Njane** on grounds that **Paul Mwaure Gichimu, Francis Kamau Gichimu** and **Simon Ndungu Gichimu** are all biological sons of the legal owner of the estate property i.e. Plot No. 867 Mpeketoni Phase 1 and have rights to inherit their father's property.

Secondly, there is an existing trust that was created by **Gichimu Njane Kamau** wherein the property in question was to be held in trust by the late **James Njane Gichimu** in their favour and other beneficiaries.

In further contrast to the objection and facts averred to in the proceedings one **Magdalene Nyokabi Njane**, in a sworn affidavit filed in Court on 16.1.2018 stated that the deceased **James Njane Gichimu** died on 8.7.1998 and was survived by herself as the wife, the petitioner **Christopher Gichimu**, the son and **Margret Nyambura** the daughter. There is also a letter from the Chief in support of survivorship.

According to the replying affidavit by **Magdalene Nyokabi Njane**, at no time has the land ever belonged to **Gichimu Njane Kamau** as deponed by the objector.

Determination

I have this day considered the affidavits in support of the petition, including the death certificate and the Letter from the Chief of the location at Mpeketoni. I also note the issues raised in the objection with regard to the petition in the making of the grant to one **Christopher Gichimu** to administer the estate of the deceased.

In the Courts assessment of the affidavit evidence, there is prima facie proof of ownership of title land by the deceased **James Njane Gichimu** based on the search certificate dated 1.9.2011. During the objection hearing, the spouse **Magdalene Nyokabi Njane** sets the record straight on the surrounding circumstances on the death of the deceased who left behind very young children – namely **Christopher Gichimu** and **Margret Nyambura**. That upon the demise of the deceased she left Mpeketoni to remarry so that she could support the children with their basic needs and welfare. That whereas the deceased died the land was never bequeathed to anyone else nor was there a trust created on behalf of the objector's family. On this point, in the Court's assessment, contrary to the objector's assertion, there is no evidence of trusteeship created in so far as the **Estate of Gichimu Njane Kamau** is concerned.

The objector did not produce any evidence to show to this Court that the land in question at one time belonged to **Gichimu Njane kamau**. There is no document to show that their father was registered as an interest holder and beneficiary to all that property known as Title No. **Lamu/Lake Kenyatta/1/867** measuring 4.3. Ha situated at Mpeketoni in Lamu County. This particular allegation has been rebutted by the search certificate of the said parcel of Land which clearly establishes the name and address of the proprietor to be **James Njane Gichimu** as at 1.9.2011. These particular allegations on creation of a Trust and the land being owned by **Gichimu Njane Kamau** by the objector remains unsubstantiated.

Further suspicion to the objection is evident from the uncontroverted averment by the spouse Magdalene Nyokabi Njane who on declining to be inherited by the brothers to the deceased forced her out of the matrimonial home. So on that basis unless for any other reason the pattern of inheritance of the deceased property shall not be disrupted nor disregarded. I guess that is the picture being painted here by the objector. That the residual estate of their late brother **James Njane Gichimu** should not benefit the spouse and children since she remarried immediately after the death of the deceased. It is not in dispute that the objector is a brother to the deceased and not in direct descent to be a dependant as provided for under Section 29 of the Law of Succession.

After all is said and done there is one factor I cannot overlook, it cannot be said that because a widow remarried the intestate estate left behind by the deceased is to be shared among his brothers. An attempt made by the objector to cling into a non-existence Trust, is supposedly meant to disinherit the children of the deceased.

The Law of Succession under Section 38 is quite clear on how the deceased estate should be distributed when he dies intestate leaving children, although in our case that only that deceased was survived with children but also a spouse. In respect of the properties registered in the name of the deceased there can be no consequence or distribution to the objectors. The arguments as regards there being a trust does not lie in view of registration proprietorship made in favor of the deceased.

Therefore, having considered the petition for making of the grant of Letters of Administration as well as subsequent protest by the objector, I am satisfied that the same is without merit.

I would dismiss this objection proceedings and this being a family matter with no costs.

DATED, SIGNED AND DELIVERED AT MALINDI THIS 26TH DAY OF FEBRUARY 2021

R. NYAKUNDI

JUDGE

NB: This Ruling has been emailed to the advocates pursuant to the causelist of 26.2.2021.

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