



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KIAMBU

SUCCESSION CAUSE NO. 2 OF 2016

IN THE MATTER OF THE ESTATE OF JOHN GITAU KIMANI (DECEASED)

JUDGMENT

1. The history of this cause is captured in detail in the ruling delivered by **Ngugi J** on 7th March 2017 and no further rendition is necessary. In that ruling, the court appointed **Peter Kimani Gitau** as the sole administrator of the estate of the deceased herein, **John Gitau Kimani** who had died intestate on 5th May 2001.

2. The said deceased had been succeeded by six children and left behind two assets, namely land parcels LR No. Kiambaa/Kinunga/xxxx and LR No. xxxx/xxx Nairobi. Although the court granted liberty to the administrator to file summons to confirm the grant before the expiry of the statutory period of 6 months, it was not until 20th June 2019 that such summons was filed. It appears that efforts made during the hiatus to reach an amicable settlement among the beneficiaries had been unsuccessful and the court did on 27/05/2019 direct the administrator to file the summons to confirm grant within a period of 21 days.

3. The application subsequently filed has the support of all the children who survived the deceased, save a daughter, **Jacinta Njeri Kamau**. The administrator proposes that the two assets of the estate, namely land parcels LR No. Kiambaa/Kanunga/xxxx and LR No. xxxx/xxx Nairobi be shared equally between the six beneficiaries. The administrator has also sought that expenses incurred by him in respect of legal fees, valuation, survey, land rates and procurement of title be deemed as part of the estate liabilities.

4. Jacinta Njeri Kamau filed an affidavit of protest to the summons. Her key contestation is that the siblings, including one **Joseph Mukabi Gitau** have always occupied distinct portions of the two assets so that the administrator, **James Goko Kimani** and herself are settled on LR No. xxxx/xxx Nairobi, while the beneficiaries Joseph Mukabi Gitau, Rose Wambui Gitau, Margaret Wangechi Gitau and Jane Wanjiru Gitau are settled on LR No. Kiambaa/Kanunga/xxxx and she therefore proposes that the assets be distributed in accordance with that mode. She also proposes that a small portion of the Kiambaa asset be excised for use as a family graveyard.

5. In her view, the mode proposed in the summons for confirmation will lead to uneconomical fragmentation of the assets. She takes issue with the expenses allegedly incurred and now claimed by the administrator and asserts that she has been paying land rates due in respect of LR No. xxxx/xxx Nairobi and that the beneficiaries ought to contribute and settle any rates payable after distribution.

6. In a supplementary affidavit, the administrator stated that he and the four siblings on his side have incurred expenses amounting to Kshs. 760,563/- compared to the alleged protestor's expenses amounting to Kshs. 213,045/- and that the former costs ought to be compensated. He also supported distribution in accordance with the proposals in the summons for confirmation.

7. The parties agreed to canvass the summons by way of submissions which by and large take cue from the respective affidavits.

8. The court has now considered the affidavits and the submissions of the respective parties. The deceased herein died intestate and was survived six children, namely:

- a. Peter Kimani Gitau
- b. James Goko Gitau
- c. Jacinta Njeri Kamau
- d. Rose Wambui Gitau
- e. Margaret Wangeci Kariuki

f. Alice Wanjiru Gitau

9. There is no dispute that he died possessed of two parcels of land and even though Jacinta Njeri Kamau (hereafter the protestor) claims that the deceased had settled the siblings within certain portions of each asset, the deceased died intestate. Certainly, the value of the asset LR No. xxxx/xxx which borders Runda Estate has a higher value in comparison to the Kiambaa asset.

10. Furthermore, the alleged sibling named Joseph Mukabi Gitau introduced at the distribution stage by the protestor appears to have predeceased the deceased herein. There is no proof that the said sibling was married or had children and none have appeared in these proceedings which commenced in 2012 and have been characterized by intense disputation. It is stated in the administrator's submissions that Joseph Mukabi Gitau died in 1985, had no family and no member thereof is known to the family. Thus, for purposes of distribution the Court will not include the said deceased son.

11. Section 38 of the Law of Succession Act provides that:

“Where an intestate has left a surviving child or children, but no spouse, the net estate shall, subject to the provisions of Sections 41 and 42, devolve upon the surviving child, if there be only one, or shall be equally divided among the surviving children.”

12. From the material on record, each of the land parcels owned by the deceased measure just under an acre. Evidently the land parcel abutting Runda Estate would fetch a much higher value than the Kiambaa property. The protestor claims that the mode proposed in the summons to confirm grant will result in uneconomical fragmentation but given the rising value of land in the entire Kiambu County, the sizes of the assets and schedules “**PKG 2a**” and “**PKG 2b**” attached to the administrator's affidavit supporting the summons, the protestor's fears are not quite justified. In this fast-urbanizing county, land parcels measuring an eighth of an acre may well become the norm rather than the exception given the pressure on land due to the rising population.

13. In my view therefore, the administrators' proposed mode of distribution accords with the law, is equitable and economically viable. In the circumstances, the court will allow the equal distribution of the two assets of the estate in the mode reflected in the schedules marked “**PKG 2a**” and “**PKG 2b**” in the summons for confirmation.

14. Regarding the expenses incurred by the administrator and which include expenses for obtaining the grant, these are to be paid out of the estate of the deceased by dint of Section 83(c) of the Law of Succession Act. The payments made to the Nairobi County Government in respect of rates ought also to be paid back to the administrator from the estate. Ditto for expenses for surveying the land for the purposes of coming up with a schedule for sharing the estate. If the protestor paid any rates, she did so on her own volition, not being an administrator upon whom such obligation was placed. Her legible receipts amount to Kshs. 93,000/=

15. Equally, regarding the administrator's expenses, the court has only considered payments properly receipted and whose receipts are annexed to the administrator's affidavit. These add up Kshs. 663,678/= and are made up of land rates for the land parcel LR No. xxxx/xxx Nairobi as well as surveying costs. Equally legal fees ideally ought to be paid out of the estate.

16. However, there is no evidence that the deceased left behind any money and the proposed distribution leaves no asset that can be liquidated to finance the expenses claimed by the administrator. In order that the administrator recoups at least some of his expenses, it would only be fair that the incurred cost amounting to Kshs. 663,678 be shouldered jointly by the beneficiaries such that each beneficiary contributes Kshs. 110,613/=. The protestors receipts amount to about Kshs. 93,000/=. She will therefore pay her share less that sum.

17. Concerning legal fees, the parties who instructed the advocates will have to find equitable ways of sharing the burden there being no existing funds in the estate for this purpose. At any rate, the beneficiaries themselves stand to obtain substantial benefit from the succession proceedings.

18. In the result, the grant is confirmed in the terms proposed in the summons for confirmation. Parties will bear own costs.

Dated, signed, and delivered electronically this 11th day of February 2021.

C. MEOLI

JUDGE