



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAKURU**

**SUCCESSION CAUSE NO. 694 OF 2012**

**IN THE MATTER OF THE ESTATE OF FREDRICK NJUGUNA NDORO**

**(DECEASED)**

**RULING**

1. This is a ruling on application dated **4<sup>th</sup> March 2020** seeking to **set aside orders confirming grant dated 30<sup>th</sup> September 2019** and that Grant issued to **Timothy Wanyoike Ngoro** and **Fredrick Njuguna Nguru** on **9<sup>th</sup> May 2019** be confirmed with mode of distribution changed as presented by the applicant herein.
2. The application is supported by affidavit sworn by **Beatrice Wanjiku Githuka** sworn on **4<sup>th</sup> March 2020**.
3. She averred that **Fredrick Njuguna Ngoro** died on **6<sup>th</sup> January 2010** and grant of letters of Administration intestate was initially issued on **17<sup>th</sup> January 2013** to **Alfred Mburu Njuguna, Arthur Nganga Njuguna Ngoro** and **Reuben Mungai Ngoro**; that all the three administrators died before they could apply for confirmation of Grant and **Timothy Wanyoike Ngoro** and **Fredrick Njuguna Nguru** made application to be substituted as administrators in this cause which grant was issued on **9<sup>th</sup> May 2019** and confirmed on **30<sup>th</sup> September 2019**; that it has grave errors in addition to not having been consented by the applicants herein.
4. Paragraph 4 of the affidavit has list of defendants and it shows 3 sons are now deceased.
5. She averred that the errors in the grant confirmed is that the applicants were not informed of confirmation proceedings neither did they consent to confirmation and were not given chance to peruse the mode of distribution; she listed their proposed mode of distribution in paragraph 6 of the affidavit.
6. She averred that the mode of distribution proposed is a fair, inclusive and equitable distribution of the remainder of the estate of their late father **Fredrick Njuguna Ngoro**.
7. In response, the co-administrator **Timothy Wanyoike Ngoro** averred that the applicants consented to his being administrator by consent filed on **8<sup>th</sup> March 2019**.
8. He averred that the Court directed that he applies for confirmation of grant given the age of this matter.
9. He averred that contrary to the applicant's averments he organized family meeting where the applicants plus his nephew **Ernest Githuka Ndungu** an Advocate who is representing his mother attended.
10. He averred that property **Nyahururu Municipality Block 6/373** was allocated to **Zebidah Wanjiku Ngoro** (deceased) who was the widow to **Alfred Mburu Njuguna Ngoro** and together with her children decided to register it under a family company known as **Wandugo Investment Limited** and annexed certificate of registration.
11. He averred that he has been administrator from the word go and the family of **Reuben Mungai Ngoro** appointed **Fredrick Njuguna Mungai** to represent them and they are not complaining; that the applicants are busy bodies purporting to represent the family of **Reuben Mungai Ngoro**.
12. He avers that the applicants want to steal from his sister **Virginia Wambui Njuguna**.
13. He averred that he would not wish to shortchange his siblings their portion of the estate and that he has been just and fair in administration of the estate and its distribution; that the applicants who are his sisters never raised objection and now want to drag the estate into legal dispute. He prayed to be allowed to distribute the estate without being disturbed with unnecessary litigation.

14. The applicants filed supplementary affidavit sworn on 16<sup>th</sup> July 2020 by **Beatrice Wanjiku Githuka**. She averred that her and her co-applicants never executed consent to confirmation of grant and therefore did not consent to mode of distribution.

15. She confirmed that they had a meeting on 8<sup>th</sup> June 2019 but the minutes attached are not true reflection of what they discussed; she averred that at the meeting, the administrators informed them that they had not obtained grant.

16. She further averred that the distribution of **Bahati/Wendo Block 6/8** was contentious issue and the applicants left knowing that they still had time to contemplate before grant was issued and later confirmed; that it was surprising to learn that confirmation had been done without the 4 sisters(applicants) being given an opportunity to address, refute or confirm the mode of distribution.

17. She further averred that the two plots comprised title **No. Nakuru West Block 3/279** and **Nakuru Municipality L.R.11098/133** were never raised or discussed at the meeting.

18. She averred that their father gifted some of his children and grandchildren during his life time as shown in paragraph 8 & 9 of the supporting affidavit respectively. She added that her and her sisters have no issue with property gifted to their siblings and 2 nephews but want to be fairly considered in what is remaining as shown in paragraph 10 of the supplementary affidavit.

19. She further averred that she hoped for amicable settlement but due to acrimony her sisters **Phoebe Waithera Maremma** and **Bilha Njeri Wanjohi** have opted out of **Bahati/Wendo Block 6/8** and two plots **Nakuru West Block3/279** and **Nakuru L.R 11098/133** and proposed to have 40 acres of **Bahati/Wendo 6/8 (New Mathioya)** be distributed to **Arthur Wanjiru Maina** and **Beatrice Wanjiku Githuka** in equal shares and the remaining 10 acres thereof to go to **Virginia, Reuben** and **Timothy** in equal shares; and the other assets as proposed in paragraphs 13 to 15.

#### **ANALYSIS AND DETERMINATION**

20. Two issues have been raised; one is whether **Githuka Advocate** should represent his mother in this matter. Conflict of interest has been mentioned in the replying affidavit. This has not however been brought out clearly. How representation by **Githuka Advocate** will prejudice the other parties' case has not been demonstrated. There is no indication that he will play any other role apart from being an Advocate in this matter. I therefore dismiss objection to have **Githuka Advocate** represent his mother in this case.

21. The second issue is whether the applicants were involved in the process of confirmation and whether the process of confirmation should be set aside.

22. From the averments herein, I note that the applicants are not opposed to the two co-administrators herein being granted letters of administration. The applicants have also confirmed that they attended a meeting called by the administrators. They however argue that the minutes attached to replying affidavit are not a true reflection of what transpired in the meeting.

23. They have not also raised issue with assets gifted to their siblings and 2 nephews during the life time of the deceased. They have made proposal on mode of distribution and pray for fairness in distribution. They deny executing consent for confirmation.

24. I have perused the consent attached to affidavit in support of summons for confirmation and note that 4 beneficiaries namely **Phoebe Waithera Maremma, Bilha Njeri Wanjohi, Arthur Wanjiru Maina** and **Beatrice Wanjiru Githuka** never signed. There is no indication that the 4 were in Court to confirm if they were agreeable to the mode of distribution.

25. From the foregoing there is no indication that the 4 applicants who I have confirmed signed consent on the mode of distribution were involved in the confirmation process and agreed to mode of distribution proposed by administrators. It would therefore be appropriate to set aside the order confirming the grant and allow parties herein to all participate in coming up with an amicable mode of distribution; failure which the Court give direction on hearing in respect to disputed issues.

#### **26. FINAL ORDERS**

1. **Court order issued on 30<sup>th</sup> September 2019 confirming grant herein is set aside.**
2. **Parties to agree on mode of distribution failure which the matter to be mentioned after 30 days from the date of this ruling for directions on hearing in respect to disputed assets**
3. **Costs in the cause.**

**Ruling dated, signed and delivered via zoom at Nakuru This 29<sup>th</sup> day of April, 2021**

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**RACHEL NGETICH**

**JUDGE**

**In the presence of:**

Schola - Court Assistant

Mr. Githuka Counsel for Applicant

Mr. Kiburi Counsel for Administrators absent