



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KIAMBU

SUCCESSION CAUSE NO. 61 OF 2019

IN THE MATTER OF THE ESTATE OF MUIGAI NJAU (DECEASED)

JUDGMENT

1. The deceased **MUIGAI KURIA NJAU** was survived by **Anne Nyambura Muigai**, of the second house and from the first house by **Jimmie Kuria Muigai, Jane Wairimi Njunge, Serah Wanjiku Njunge, Paul Njuguna Njunge, Esther Wanjiku Njunge and Walter Muigai**.
2. A grant of letters of administration intestate was issued on 31st July 2018, in this matter, to **Paul Njuguna, Jimmie Kuria, Anne Nyambura and Jane Wairimu**.
3. Summons for confirmation of that grant dated 22nd August 2018 was however only filed by two administrators, namely **PAUL NJUGUNA** and **JANE WAIRIMU**. **Jimmie Kuria** filed an affidavit in protest of the proposed mode of distribution. The court ordered parties to adduce viva voce evidence in respect to the summons for confirmation of grant and the affidavit of protest. At the hearing only Paul Njuguna and Jimmie Kuria testified.
4. Paul Njuguna testified that the summons for confirmation of grant sought to ensure all the beneficiaries inherited the estate equally. He said that his proposal of distribution, in the summons for confirmation of grant, needed further to be guided by a Land Surveyor to ensure all beneficiaries obtained equal shares. He finally stated that Anne Nyambura and Walter Njau were the only two beneficiaries residing on the deceased's properties and that this was because they were preventing others from using the same. He also stated that the water pumps on the land should be sold and the proceeds be divided equally because the differences between the beneficiaries will not permit the fair use of pumps.
5. Jimmie Kuria confirmed that he is one of the four administrators of this estate. He proposed that his step mother Anne Nyambura be given one acres while others be given get 0.67 acres from the two properties owned by the deceased. He further stated that the deceased built a storey building on Plot No. 330 which the deceased intended to occupy with his wife Anne Nyambura. That the deceased however died before he and Anne Nyambura could occupy the building. Jimmie Kuria requested that the land to be allocated to Anne Nyambura be where that building is located.
6. Jimmie Kuria further stated that deceased had allocated a portion of land to Walter Njau on plot 330 for Walter Njau to build his house. He requested the court to allocate Walter Njau his portion where that house is.

ANALYSIS

7. Having received the oral evidence of the two witnesses and considering affidavits filed. I understand that deceased had, prior to his death, constructed a house for his and his wife's (Anne Nyambura) occupation. That marriage did not bear any children. Jimmie in evidence also stated that there is a commercial building on the plot 330 which ought to be given to Anne Nyambura for her to use the proceeds of that building to support herself.
8. The allegation by Jimmie Kuria that Walter Njau received a gift *inter vivos* from the deceased was not clear at all. It was not clear if Jimmie Kuria's testimony was that Walter Njau in getting the said gift was given larger portion than other beneficiaries. Whatever the case I find the evidence of that alleged gift to Walter Njau failed to meet the dictates of **Section 31** of the Law of Succession which provides:-

“A gift made in contemplation of death shall be valid, notwithstanding that there has been no complete transfer of legal title, if-

(a) The person making the gift is at the time contemplating the possibility of death, whether or not expecting death, as the result of a present illness or present or imminent danger; and

(b) A person gives movable property (which includes any debt secured upon movable or immovable property) which he could

otherwise dispose of by will; and

(c) There is delivery to the intended beneficiary of possession or the means of possession of the property or of the documents or other evidence of title thereto; and

(d) A person makes a gift in such circumstances as to show that he intended it to revert to him should he survive that illness or danger; and

(e) The person making that gift dies from any cause without having survived that illness or danger; and

(f) The intended beneficiary survives the person who made the gift to him:

Provided that-

i. no gift made in contemplation of death shall be valid if the death is caused by suicide;

ii. the person making the gift may, at any time before his death, lawfully request its return. The person making the gift may, at any time before his death, lawfully request its return.”

9. The gift, if indeed it was given to Walter Njau it was not a perfect gift *inter vivos*. Walter Njau himself did not adduce evidence in that regard. I draw attention, in this respect to what was stated in the case in re Estate of the Late **In re ESTATE OF THE LATE GEDION MANTHI NZIOKA (Deceased) [2015] eKLR**

“See in this regard Halsbury’s Laws of England 4th Edition Volume 20(1) at paragraph 32 to 51.

In Halsbury’s Laws of England 4th Edition Volume 20(1) at paragraph 67 it is stated as follows with respect to incomplete gifts:

“Where a gift rests merely in promise, whether written or oral, or in unfulfilled intention, it is incomplete and imperfect, and the court will not compel the intending donor, or those claiming under him, to complete and perfect it, except in circumstances where the donor’s subsequent conduct gives the donee a right to enforce the promise. A promise made by deed is however, binding even though it is made without consideration. If a gift is to be valid the donor must have done everything which according to the nature of the property comprised in the gift, was necessary to be done by him in order to transfer the property and which it was in his power to do.”

DISPOSITION

10. Doing the best I can and considering the evidence adduced I make the following orders:

(a) **KABETE/NYATHUNA/330**

To be shared equally between

i. ANNE NYAMBURA MUIGAI

ii. JIMMIE KURIA MUIGAI

iii. SERAH WANJIKU NJUNGE

iv. GRACE WANGARI NJUNGE

v. WALTER NJAU MUIGAI

11. ANNE NYAMBURA MUIGAI shall be given her portion where the story building and the commercial buildings are situated.

(b) **KABETE/NYATHUNA/1674** to be shared equally between

i. JANE WAIRIMU NJUNGE

ii. PAUL NJUGUNA NJUNGE

iii. ESTHER WANJIKU NJUNGE

(c) **WATER PUMPS**

To be used equally and be shared equally by all beneficiaries.

JUDGMENT DATED AND DELIVERED AT KIAMBU THIS 16TH DAY OF DECEMBER, 2021.

MARY KASANGO

JUDGE

Mr. Kiarie Njuguna for Jimmie Kuria present

Mr. Kaburu for Anne Nyambura no appearance

Paul Njuguna Njunge - in person not present

Jane Wairimu – in person not present

Walter Njau – in person present

COURT

Judgment delivered virtually.

MARY KASANGO

JUDGE