



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

FAMILY DIVISION

SUCCESSION CAUSE NO. 1251 OF 2014

IN THE MATTER OF THE ESTATE OF MUSA NJOROGE NGUGI (DECEASED)

NELLIE WANJIRU NGUGI.....1ST RESPONDENT

JOHN THUO NGUGI.....2ND RESPONDENT

VERSUS

EBONY KADII MASHA.....PROTESTER

JUDGMENT

1. The deceased Musa Njoroge Ngugi died intestate on 5th October 2013. He left a widow Nellie Wanjiru Ngugi (the 1st applicant) with who he had three children:

- a) Ivy Wanjiku Ngugi (daughter);
- b) June Wambui Ngugi (daughter); and
- c) Christopher Michael Ngugi Njoroge; (son)

2. The deceased had a relationship with one Jane Kamuche Masha which resulted into two children:-

- (a) Ebony Kadii Masha (daughter/protester); and
- (b) Christopher Michael Ngugi Njoroge (son).

3. There is no dispute that the 1st applicant and all the five children are beneficiaries of the estate of the deceased.

4. The applicant and the deceased's brother John Thuo Ngugi (2nd applicant) petitioned the court for the grant of letters of administration. The grant was issued to them on 12th November 2014. The applicants filed the present application dated 8th December 2016 seeking the confirmation of the grant. The protester opposed the application. She opposed the distribution made to her and to her minor brother. Her case was that there were no copies of title deeds or proof of ownership of the properties forming the estate of the deceased; the land properties had no current searches to show they belonged to the deceased; there was no evidence of the location, size and value of the properties allocated to them; the school fees and related expenses of the minor had not been sorted out; the property allocated to the minor ought to have been held in trust for him by his mother, and not by the applicants, and the deceased's terminal benefits at Kenya Airways ought to have been distributed equally to all the beneficiaries.

5. The deceased's estate comprised the following properties:-

- (a) LR No. 13511/32;
- (b) Ngong/Ngong/5970;

- (c) Ruiru/Mugutha/Block 1/T.170, 172 and 173;
- (d) Ruiru/Ruiru East/Block 2/3596 and 3597;
- (e) 2.2 acres in Githunguri/Kiairia/554;
- (f) plot No. 113 in Witu Township
- (g) plot No. 87 in Lamu Island;
- (h) shares in CDS A/C No. B/07/B-0000011903800/LC-0;
- (i) money at Barclays Bank Prestige A/C No. 0705104239;
- (j) money in NIC Bank joint A/C No. 1000481347;
- (k) money at Family Bank A/C No. 165467;
- (l) proceeds of Terminal Benefits from Kenya Airways;
- (m) proceeds of Old Mutual Money Market in A/C No. 45159;
- (n) proceeds of Kenya Airways Staff Provident Fund Membership A/C No. 3198;
- (o) 200 ordinary shares in Eveready Company Limited;
- (p) 6431 ordinary shares in Kengen Limited;
- (q) 40,000 ordinary shares in Kenair Limited;
- (r) 600 ordinary shares in Scan Group Limited;
- (s) 2000 shares in Kenya Airways Employee Share Ownership Plan;
- (t) 2500 shares in HFCK Limited;
- (u) 2200 shares at Safaricom Limited;
- (v) vehicle KBG 990E; and
- (w) vehicle KAL 477D.

6. In the application or confirmation, the applicants swore a joint affidavit in which they proposed how the estate of the deceased should be distributed. The 1st applicant was given the following properties:-

- (a) LR No. 13511/32;
- (b) shares in CDS A/C No. B/07/B-0000011903800/LC-0;
- (c) money at Barclays Bank Prestige A/C No. 0705104239;
- (d) money in NIC Bank joint A/C No. 1000481347;
- (e) money at Family Bank A/C No. 165467;
- (f) proceeds of Terminal Benefits from Kenya Airways;
- (g) proceeds of Old Mutual Money Market in A/C No. 45159;
- (h) two vehicles;
- (i) all the shares at Safaricom.

7. Ngong/Ngong/5970, Ruiru/Ruiru East/Block 2/3596 and 3597 and plot No. 113 in Witu Township were to be shared equally between the

protester and Tarvone Mark Ngugi, with the share of the latter being registered in the names of the applicants to hold in trust for him until he is of age. The protester was further given the 600 shares of Scan Group Limited and Kengen Limited, and the money in Family Bank.

8. Ivy Wanjiku Ngugi was given the proceeds at Old Mutual Money Market Fund A/C No. 4519 and shares in KFCK Limited. Jane Wambui Ngugi was given the shares at Kenya Airways Employee Share Ownership Plan.

9. Lastly, the proceeds of Kenya Airways Staff Provident Fund Membership A/C No. 3198 and the 40,000 shares in Kenair Limited were to each be shared equally by all the beneficiaries of the estate of the deceased.

10. It is not in dispute that on 8th December 2016 the protester consented to the mode of distribution that was filed by the applicants along with the application for the confirmation of the grant. In the affidavit of protest the protester acknowledges that she signed the consent. I agree with the advocates of the applicants that she cannot be allowed to resile from the consent. The other reason why she cannot be allowed to question the distribution is because the issues she raised in the affidavit of protest were the subject of the application dated 6th November 2017 by her. The application was decided against her in the ruling delivered on 18th July 2018. There was no appeal against that ruling. It is also noted that on 26th June 2015 the protestor and the minor were given Kshs.11,947,250/= through their mother. These were proceeds of the deceased from the Kenya Airways Staff Provident Fund.

11. I am satisfied that the distribution by the applicants was fair and equitable and will take care of the vulnerable and special situations of Tarvone Mark Ngugi and the 1st applicant (**In Re Estate of John Musambayi Katumanga (Deceased) [2014]eKLR**). Consequently, I dismiss the protest and confirm the grant as proposed by the applicants. However, the shares of Tarvone Mark Ngugi shall be held in trust jointly by Ebony Kadii Masha and the Deputy Registrar of this court until he is of age.

12. Costs shall be borne by the respective parties.

DATED AND DELIVERED AT NAIROBI THIS 28TH DAY OF JANUARY 2020

A.O. MUCHELULE

JUDGE