



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIVASHA

(CORAM: R. MWONGO, J)

HIGH COURT SUCCESSION CAUSE NO. 133 OF 2015

IN THE MATTER OF THE ESTATE OF GEOFFREY KARIHA GITAU, (DECEASED)

SARAH NJIKU KARIHA.....PETITIONER /APPLICANT

-VERSUS-

NAOMI WAMBUI KARIHA.....PETITIONER/ RESPONDENT

RULING

Background

1. The deceased died intestate on 18th June, 2014, leaving behind two widows: Naomi Wambui and Sarah Njiku, each with seven and eleven children, respectively. On 31st October, 2014 Naomi Wambui and her son Nahashon Gitau Kariha filed a petition for grant of letters of administration at the subordinate court in Engineer in Succession Cause No 82 of 2014 (the “1st Petition”). She cited Serah Njiku and Ruth Njeri Kariha to accept or refuse letters of administration.

2. In her affidavit in support of the petition, Naomi Wambui indicated the following properties as subject of the succession:

a) Title No Nyandarua/Githioro/2673

b) Title No Nyandarua/Githioro/3722

Certificates of official search were also attached.

3. On 5th November, 2014, Sarah Njiku filed a citation in Succession Cause No 47 (referred to herein as “2nd Petition”) at the High Court in Naivasha citing Naomi Wambui and Nahashon Gitau Kariha.

4. In her Supporting affidavit Serah Njiku identified the land parcels above as part of the deceased’s property but added:

Parcel No Nyandarua/Githioro/1691

5. On 13th February, 2015, an Objection (“the Objection”) to the making of a grant was filed in the 2nd Petition by Boniface Mwangi Kimani, claiming a purchaser’s interest in 0.5 acres of land sold to him by the deceased but not transferred. The portion is claimed from a parcel of land known as:

Nyandarua/ Githioro/ 3054

A photocopy of a Title Deed and official search for the above parcel of land was annexed to the objection.

6. Meoli, J ordered the 1st Petition (Succession Cause No 82 of 2014) to be transferred to Naivasha High Court, and the two matters to proceed in the High Court. In proceedings on 16th June, 2015, it was clarified that Nyandarua/Githioro/3054 had been subdivided “and is now parcel numbers 3722 and 3723”. The court ordered the two widows to file a joint application for Letters of administration.

7. The fresh application for letters of administration was filed on 20th August, 2015, in the present file in the High Court. The 2nd Petition file was closed. In the new joint application, the properties identified as belonging to the deceased are:

a) Title No Nyandarua/Githioro/2673

b) Title No Nyandarua/Githioro/3722, and Naivasha/Maraigushu Block 17/173 (Mugane).

8. A Grant of Letters of Administration intestate dated 7th August, 2016, was issued to Naomi Wambui Kariha and Serah Njiku Kariha on the basis of the fresh application. Thereafter, a summons for confirmation of grant was filed by Naomi Wambui on 13th October, 2016, and a confirmed grant was issued dated 11th July, 2017.

9. On 28th February, 2018, Serah Njiku filed a summons for revocation or annulment of the grant, citing fraud in the application for confirmation for failure to obtain her consent to the proposed distribution.

10. On 16th July, 2018 this court called for the files in the 1st Petition and 2nd Petition to be tied together with the present file, and on 18th October, 2018, the court peremptorily revoked and annulled the confirmed grant for invalidity when it was pointed out that the Summons for confirmation had omitted the signature of Serah Njiku, the 2nd Petitioner. Parties were granted time for negotiations on distribution.

11. When parties were unable to agree on distribution, they were directed to file affidavits and a hearing was held on 21st May and 24th July, 2019. Submissions were also filed and highlighted.

12. From a close perusal of the parties' affidavits and following the hearing and submissions, parties are apparently still disagreed as to the extent of the estate of the deceased. Whereas there is no doubt that properties include:

a) Title No Nyandarua/ Githioro/2673, and

b) Title No Nyandarua/ Githioro/3722,

It is not clear whether Naivasha/Maraigushu Block 17/173 (Mugane) is part of the deceased's estate.

13. Further, it transpired from the hearing and submissions that certain properties were transferred by the deceased to some of his children prior to his death. In light of Section 42 of the Law of Succession Act, these must be brought into account, in respect of the children and or houses that were beneficiaries of such gifts. **Section 42** provides:

“Where—

(a) an intestate has, during his lifetime or by will, paid, given or settled any... property to or for the benefit of a child, grandchild or house; or

(b) property has been appointed or awarded to any child or grandchild

under the provisions of section 26 or section 35 of this Act,

that property shall be taken into account in determining the share of the net intestate estate finally accruing to the child, grandchild or house.”

14. The overarching provisions covering intestate succession where a deceased was polygamous are in **section 40** of the **Law of Succession Act** which provides as follows:

“(1) Where an intestate has married more than once under any system of law permitting polygamy, his personal and household effects and the residue of the net intestate estate shall, in the first instance, be divided among the houses according to the number of children in each house, but also adding any wife surviving him as an additional unit to the number of children.

(2) The distribution of the personal and household effects and the residue of the net intestate estate within each house shall then be in accordance with the rules set out in sections 35 to 38.”

15. In light of the foregoing, and to avert further wastage of the Court's time and to enable expeditious determination to enable distribution, it is necessary to obtain full details of all properties mentioned in the course of the proceedings.

16. Accordingly, I order as follows:

1. The parties will make full disclosure of all properties of the deceased by filing further supporting affidavits giving full details of the said properties;

2. The parties are directed to obtain copies of the Green Cards for all the following parcels of land certified by the Registrar and detailing any subdivisions and transfers made by the deceased to any of his children in respect of:

a) Title No Nyandarua Githioro/3054 and its offshoots:

1. Title No Nyandarua/ Githioro/3722 and

2. Title No Nyandarua/ Githioro/3723

b) Title No Nyandarua/ Githioro/2673

c) Naivasha/ Maraigushu Block 17/173 (Mugane)

d) Title Nos Nyandarua Githioro/2839; 3109; and 3145 mentioned in the Further Affidavit of Sarah Njiku Kariha dated 15th June 2015

3. Should it become necessary, or where further clarity is needed, the Court may summon the Registrar of Lands to avail evidence concerning any of the aforesaid parcels of land; and or may require further particulars from the parties.

4. The filings directed herein shall be done within sixty (60) days of the date of this order.

17. Should the parties so decide, they may agree by consent to a mode of distribution which the court may adopt as an order of the court.

18. No order is made as to costs herein.

19. Orders accordingly.

Dated at Naivasha this 12th day of March, 2020

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RICHARD MWONGO

JUDGE

Delivered in the presence of:

1. Sarah Njiku Kariha - Applicant/Petitioner in person

2. Njihia for the Respondent/ Petitioner

3. Court Clerk - Quinter Ogutu