



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

FAMILY DIVISION

SUCCESSION CAUSE NO. 2033 OF 1998

IN THE MATTER OF THE ESTATE OF NYAMU GIKARU (DECEASED)

EUNICE NJERI NGUGI.....APPLICANT

VERSUS

LEONARD NYAMU GIKARU.....RESPONDENT

RULING

1. The application coming for consideration in this Ruling is dated 15.6.2018 seeking the following orders.

(i) THAT this suit be revived (allowed)

(ii) THAT the Administrator of the Estate be substituted.

(iii) THAT the grant issued herein which was confirmed and cancelled be confirmed again.

(iv) THAT costs of the Application be provided for.

2. The Application is supported by the Affidavit of the Applicant EVANS NYAMU MUNGAI also dated 15.6.2018

3. The grant herein was issued to LEONARD NYAMU GIKARU (the Respondent) on 20.11.1993 and cancelled on 10.12.2003 when the parties were directed to agree on the mode of distribution.

4. The hearing proceeded by way of viva voce evidence. The Applicant asked the court to replace the Respondent as administrator of the estate for reasons that he has not been keen in discharging his duties.

5. The Applicant said the respondent allocated himself prime property which is KABETE/LOWER KABETE/T. 29) located at Kingeero Township valued at Ksh.8million and he also wants a share at KABETE/LOWER KABETE/163 which the other 3 beneficiaries are sharing.

6. The Respondent opposed the Application and said the estate is still intact. He said the beneficiaries were not co-operative that is why distribution has not taken place.

7. The Respondent said the Town Plot he occupies is 0.22 Acres and he is asking for 0.06 acres to make it 0.28 Acres. He said every person will get 0.28 acres and further that the 0.06 acres he is asking has his family grave yard where he has buried his kins.

8. The Respondent also said the issue was discussed and agreed on by the family before the chief in the presence of representatives and further that the Applicant was represented by WILFRED MUNGAI (now deceased) who was his father.

9. I have considered the evidence adduced by the parties and also the submissions filed by both parties and I find that it is not in dispute that the Applicant and the Respondent are grandchildren of the deceased herein NYAMU GIKARU who died intestate in 1972.

10. The Deceased had the following sons.

(i) Njoroge Nyamu (Deceased)

(ii) Hiram Ngugi (Deceased)

(iii) Gicinji Nyamu (Deceased) and

(iv) Wilfred Mungai (Deceased)

11. The Deceased's sons were survived by the following:

(i) Leonard Nyamu (the Respondent)

(ii) Eliud Nyamu

(iii) Serah Wangari and

(iv) Evans Nyamu (the Applicant)

12. Leonard Nyamu is the beneficiary of the Estate of Njoroge Nyamu while the Applicant Evans Nyamu is the beneficiary of the Estate of Wilfred Nyamu Mungai.

13. Eliud Nyamu and Serah Wangari are beneficiaries of the Estate of Ngugi Nyamu and Gicinji Nyamu respectively.

14. There is also evidence that the deceased left the following properties:

(i) KABETE/LOWER KABETE/163 measuring 1.3 Acres

(ii) KABETE/LOWER KABETE/T. 29

15. The Respondent who is settled on the Plot at Kingeero is the Administrator of the Estate. He proposed that he get the plot entirely and also gets 0.06 acres share of KABETE/LOWER KABETE/163 where his family graveyard is.

16. The Applicant wants the Respondent to get only the town plot and to let the other 3 beneficiaries to share KABETE/LOWER KABETE/163 because the Plot as a higher value.

17. On the alternative, he wants the Respondent to give him the town plot and to share Kabete/lower Kabete/163 with the other two beneficiaries.

18. The previous grant was revoked on 10.12.2003 and the parties were told to agree on the mode of distribution which they have not done to date.

19. The issues for determination in the application dated 15.6.2018 are as follows:

(i) Whether the Respondent should be replaced as an administrator of the Estate.

(ii) How should the estate be distributed?

(iii) Who bears the costs of the application?

20. On the issue as to whether the Respondent should be replaced as an administrator, I find the reason for seeking removal of the Respondent is that he has not distributed the estate.

21. However, the reason for failure to distribute the estate is that the parties have wrangling and they have not agreed on the mode of distribution.

22. I accordingly find that removal of the Respondent will not help. The grounds of removal are set out in Section 76 of the Law of Succession Act (Cap 160) as follows:

A grant of representation whether or not confirmed, may at any time be revoked or annulled if the court decides, either on application by interested party or its own motion:-

i. That the proceedings to obtain the grant were defective in substance;

ii. That the grant was obtained by the making of a false statement or by concealment of from the court of something material to the case.

iii. That the grant was made by an untrue allegation of fact essential in point of law to justify the grant notwithstanding that the

allegation was made in ignorance or inadvertently.

iv. The person to whom the grant was made has failed, after die notice and without reasonable cause either:-

a. To apply for confirmation of the grant within a year from the date thereof or such longer period as the court has ordered or allowed; or

b. To proceed diligently with the administration of the estate; or

c. To produce to the court, within the time prescribed any such inventory or account of administration as is required by the provisions of paragraph (e) and (g) of section 83 or has produced such investigation or account which is false in any material particular; or

v. That the grant has become useless and inoperative through subsequent circumstances.

23. The Solution is to make a determination on the issue of how the estate should be distributed. There is no dispute that the estate has two parcels. One is a town plot at Kingeero Township where the Respondent has settled and there is evidence that he has developed the same.

24. The other is KABETE/LOWER KABETE/163 where the other three beneficiaries are settled.

25. The bone of contention is the Respondent's claim of 0.06 acres from KABETE/LOWER KABETE/163 where his family grave yards are situated.

26. The Applicant's submission is that it is unfair for the Respondent to have the Town plot valued at 8 million and also get a share of KABETE/LOWER KABETE/163. The Applicant wants to have the town plot and let the Respondent and the other two beneficiaries share KABETE/LOWER KABETE/163.

27. However, I find that it is not fair for the Respondent to be uprooted from the town plot where he has resided for a long time and where he has developments simply because the Applicant wants it.

28. I also find that the Respondent is asking for a place for a graveyard at KABETE/LOWER KABETE/163 and not an equal share.

29. I also find that the Applicant does not deny that this issue had been discussed when his father was alive at the chief's office and it was agreed that the Respondent be given a graveyard.

30. I find that each of the families at the end of the day will be having a total of 0.28 acres. I find that the objection by the Applicant has no basis. His desire for the town plot is based on his grounds that the town plot is valued at 8 million while KABETE/LOWER KABETE/163 is valued at 12 million. However, the said valuer of the parcels was not called as a witness in this case.

31. I accordingly divide the properties as follows:

(i) KABETE/LOWER KABETE/163 to be shared as follows:

a) Eliud Nyamu – 0.28 Acres

b) Serah Wangari – 0.28 Acres

c) Evans Nyamu – 0.28 Acres

d) Leonard Nyamu – 0.06 Acres)

(ii) KABETE/LOWER KABETE/T.29

- Leonard Nyamu – 0.22 Acres)

32. On the issue of costs, I direct that each party bears its own costs of this suit since this is a family dispute.

33. The Court further directs that's the grant issued to the respondent Leonard Nyamu Gikera on 20.11.1998 be and are hereby confirmed.

34. The Certificate of Confirmation to re-issue forthwith to the Respondent.

35. The Respondent to transfer the properties within 90 days of this date.

DELIVERED, SIGNED AND DATED IN OPEN COURT THIS 6TH DAY OF MARCH, 2020

ASENATH ONGERI

JUDGE OF THE HIGH COURT OF KENYA, NAIROBI.