



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**MILIMANI LAW COURTS**

**FAMILY DIVISION**

**SUCCESSION CAUSE NO. 1617 OF 2016**

**IN THE MATTER OF THE ESTATE OF RNN (DECEASED)**

**DN.....PETITIONER**

**VERSUS**

**RKW.....OBJECTOR**

**HARVEST CENTER FELLOWSHIP CHURCH.....INTERESTED PARTY**

**JUDGMENT**

1. The deceased RNN died intestate on 27<sup>th</sup> January 2002. She had four children:

- (a) DN (the petitioner);
- (b) the late VWW;
- (c) GM; and
- (d) the late David Nganga.

The late VWW left a son RKW (the objector), and the late DN left a son KNN. GM is mentally challenged.

2. A joint grant of letters of administration intestate was issued to DN (the petitioner), KNN and RK (the objector).

3. The estate of the deceased comprised Dagoretti/Kangemi/[...] measuring 0.404 Ha.

4. There is the claim by Harvest Centre Fellowship Church (the interested party) that they bought 0.5 acres of the estate land from the deceased when she was alive. Secondly, the beneficiaries have asked that the estate of the deceased be shared to them. This judgment seeks to resolve the two issues.

5. I will begin with the claim of the interested party. There is a written agreement dated 9<sup>th</sup> October 2001 signed between the deceased and the leaders of the interested party who were Bishop Philemon Wachara, pastor Hudson Ajesa Alubusia, James Thande and Morris Mirasi. The deceased was selling 0.5 acres of Dagoretti/Kangemi/813 to the interested party for Kshs.1,600,000/=. Kshs.1,115,000/= was paid. The balance was Kshs.485,000/=. The petitioner and Kisha Njoroge Nganga acknowledge this sale, as did Geoffrey Gitonga Rintuara who swore an affidavit of claim on behalf of the interested party. They stated that the Kshs.485,000/= was to be paid on completion of the sale. The sale was not completed by the time the deceased died. It is not in dispute that the interested party took possession of the portion sold to them which they have developed.

6. The objector's case is that the deceased did not enter into the said transaction. Instead, he stated, it was the petitioner who purported to sell the portion to the interested party at a time when the deceased was quite ill.

7. In paragraph 7 of the affidavit of claim by Geoffrey Gitonga Rintuara, it was stated as follows:-

**“7. THAT the interested party avers that it remitted a substantial sum of the Purchase Price in the sum of Kshs.1,115,000/= to the deceased prior to her demise, and there has been an outstanding sum of Kshs.485,000/= which was not to be remitted in exchange of the completion documents .....**”

8. In response to that averment the objector stated as follows:-

**“7. THAT the statement in paragraph 7 is so admitted SAVE FOR the fact that the amount was remitted to the deceased because at that point the deceased was incapacitated by illness and was unable to comprehend the level of whatever transaction was going on and therefore the sum of Kshs.1,115,000/= was remitted to the petitioner herein hence the interested party is put to strict proof that the funds were indeed received by the deceased.**

**8. THAT in response to paragraph 9, I urge the Honourable Court to direct that the balance of the Purchase Price Kshs.485,000/= for a portion of Land Title Number Dagoretti/Kangemi/813 measuring Nought Decimal Five (0.5) acres together with interest accrued be remitted to the Estate of Rahab Njanja Njoroge and upon confirmation of grant be distributed equally amongst all beneficiaries of the Deceased estate.”**

9. It is clear from the objector’s affidavit that he was being unsure whether to admit or deny the existence of the contract between the deceased and the interested party. For instance, if the contract was between the petitioner and the interested party why does he want the balance of the purchase price to be paid to the estate of the deceased to be shared among the beneficiaries. However, in the written submissions by counsel for the objector, it was stated as follows:-

**“The interested party has sufficiently demonstrated in its Affidavit of Claim annexing the sale agreement dated 9<sup>th</sup> October 2001 that indeed there was a sale transaction between themselves and the deceased. It is not in dispute that a balance of Kshs.485,000/= has not been settled by the interested party.....”**

10. Better still, in paragraph 20 of the affidavit of protest sworn by the objector on 27<sup>th</sup> July 2018 he stated that he had no objection to the interested party being allowed.

**“to own the said portion save that they should remit the outstanding balance of the purchase price being Kenya Shillings Four Hundred Thousand (Kshs.400,000/=) which constitutes part of the deceased’s assets and which sum should be divided equally among all the beneficiaries.”**

11. On the evidence available, and considering that the issue should be settled on the balance of probabilities, I find that there was indeed a contract between the deceased and the interested party on the terms contained therein. I find that the interested party was the purchaser of the deceased’s Dagoretti/Kangemi/813, and that the purchase was not completed by the time the deceased died. The deceased had entered into a binding transaction by the time she died, and her personal representatives have to fulfil her obligation under the transaction (**In re Estate of Julius Ndubi Javan (Deceased) [2018]eKLR**).

12. Regarding the distribution of the estate of the deceased, the petitioner provided for the interested party and indicated that the remainder of the land was to be shared equally by the four beneficiaries. KNN agreed with him. The objector, in paragraph 19 of the affidavit of protest referred to in the foregoing, asked for the equal sharing of the estate. He, however, added that the deceased had already indicated where on the parcel each child should settle, on basis of which the children had settled. He asked that the sharing should take that into consideration. He then sought the equal sharing of the balance of the purchase price.

13. On basis of above, the estate of the deceased shall be shared as follows:-

- (a) 0.5 acres of Dagoretti/Kangemi/813 shall go to Harvest Centre Fellowship Church (the interested party);
- (b) the balance of Dagoretti/Kangemi/813 shall be shared equally among DN, RKW, KNN and GM;
- (c) the share of GM shall be registered in the joint names of DN, RKW and KNN to hold in trust for him;
- (d) before the transfer of the share in (a) the interested party shall pay Kshs.485,000/= which shall be shared equally by DN, RKW, KNN and GM;
- (e) the share of GM in the Kshs.485,000/= shall be used for his upkeep;
- (f) the shares in (b) shall make sure that each recipient occupies the place where he is presently settled, but subject to the acreage that he is entitled to;
- (g) each party has leave to apply; and
- (h) each party shall bear own costs.

14. In those terms, the joint grant issued on 14<sup>th</sup> April 2017 is hereby confirmed.

**SIGNED and DELIVERED at NAIROBI this 17<sup>TH</sup> JUNE 2020.**

**A.O. MUCHELULE**

**JUDGE**