



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
FAMILY DIVISION
SUCCESSION CAUSE NO. 1277 OF 2009
IN THE MATTER OF THE ESTATE OF JOSEPH WIGURA MURITU(DECEASED)
JUDGEMENT

1. The deceased herein died intestate on the 4th of January 1986 and was survived by several sons and daughters as enumerated below;

- a. James Muritu
- b. Julius Nyingi
- c. Johnson Kamuri
- d. Peter Karanja
- e. Mercy Wanjiru
- f. Florence Wanjeri
- g. Irene Wairimu &
- h. Joseph Waiguru

2. On the 18th of February 2010 **Johnson Kamuri** and **Peter Karanja** moved the court for grant of letters of administration; a grant was issued to them on the 29th April, 2010.

3. The said administrators applied for confirmation of the grant on the 19th of September 2017. The same attracted protest from Julius Nyingi, James Muritu. and Mercy Wanjiru who were not in agreement with the proposed mode of distribution. Joseph Waiguru a grandson also protested claiming that his grandfather had orally bequeathed to him a portion of the estate.

4. Despite the assertion by some of his sons that the deceased had left an oral will the averments fell short of the requirements of the law, and no independent witnesses were brought to testify in support despite the serious contestation by several of his children. In the absence of concrete evidence, the court will disregard the assertion and apply the relevant sections of The Law of Succession Act("The Act")in considering whether or not the deceased had given properties *inter vivos* and of course take into consideration what he already distributed in distributing the rest of the estate in order to be fair to all.

5. It is in evidence that the deceased owned property No. Loc. 10/Kahuti/659 comprising of 12 acres which he sub-divided into 4 namely, Loc.10/Kahuti/2289, 2290, 2291 & 2292 and distributed them as follows; -

- a. Loc.10/Kahuti/2289 measuring 3.5 acres to Johnson Kamuri
- b. Loc. 10/Kahuti/2290 measuring 3.3 acres to Peter Karanja
- c. Loc. 10/Kahuti/2291 measuring 3.4 acres to Julius Nyingi
- d. Loc.10/Kahuti/2292 measuring 1.8 acres to himself.

6. The deceased was said to have also owned and transferred

Loc.8/Theri/874 measuring 8 acres to James Muritu

Loc. 10/Kahuti/1178 measuring 2.1 acre to Irene Wairimu

Loc. 10/Kahuti/2102 measuring 0.5 acres to Irene Wairimu

Loc. Kahuti/1867 measuring 1.1 acres to Florence Wanjeri

7. The deceased is also said to have been a shareholder in Githiga Investment Co. Ltd and Githiga United company and whose dividends and rent have since his death been collected by James Muritu and Julius Nyingi respectively.

8. The above facts are not in dispute save that both Julius Nyingi and James Muritu claim interest in the companies but failed to prove their respective claims/ interests.

9. From the above facts the deceased gave all his children properties during his life time except Mercy Wanjiru. What is now in dispute and left for distribution is property Loc. 10/ Kahuti/2292 measuring 1.8 acres and his interest in Githiga United Co. Ltd & Githiga Investment Co. Ltd.

10. Before I venture into the provisions of the law and what would be fair in the circumstances of this case, a claim that Irene held 0.5 acres of Loc. 10/Kahuti/2102 in trust for Mercy was not proved, by those making that assertion. Mercy testified that she bought the same from Irene which information was not challenged. Indeed, she produced a sale agreement to prove her claim.

11. The relevant applicable sections of the Act in the circumstances of this case are Sections 38 and 42, which provide as follows; -

38. Where an intestate has left a surviving child or children but no spouse, the net intestate estate shall, subject to the provisions of sections 41 and 42, devolve upon the surviving child, if there be only one, or shall be equally divided among the surviving children.

***42. Previous benefits to be brought into account 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;
(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.

12. The deceased having provided for all his children save for Mercy and the law being clear that all the deceased children ought to be treated equally, it is my considered opinion that what the deceased left behind undistributed being Loc.10/Kahuti /2292 ought to go to Mercy in its entirety as nothing short of that will be justifiable.

13. If at all, there are any developments on the said portion of land, the heirs and or/any their offspring's or other persons who undertook development did so without any colour of right, in my view they must bear the consequences of their illegal action. However, Mercy in promoting family unity ought to compensate on terms to be agreed upon.

14. The shares in Githiga investment company Ltd and Githiga United Ltd should be shared by all the deceased children equally except where any one of them relinquishes their interest in writing.

15. As for Joseph Waiguru the Grandson since there was no concrete proof of the alleged oral wish/will his claim cannot be sustained and the same must fail.

16. Each party will bear their own costs.

Delivered and Signed at Nairobi this 30TH day of JULY 2020

ALI-ARONI

JUDGE