



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT ELDORET**

**SUCCESSION CAUSE NO. 124 AND 125 OF 1996**

**IN THE MATTER OF THE ESTATE OF MORRISON MUHIKA NJOROGE (DECEASED).**

**MICHAEL PETER NJOROGE.....APPLICANT**

**VERSUS**

**ELIZABETH WANJIRU MUHIKA.....1ST RESPONDENT**

**STEPHEN NJOROGE MUHIKA.....2ND RESPONDENT**

**RULING**

1. **ELIZABETH WANJIRU MUHIKA (1<sup>st</sup> applicant) and STEPHEN NJOROGE MUHIKA (2<sup>nd</sup> applicant)** filed this summons dated 8/10/2019 seeking rectification of the confirmed grant and requesting this court to allocate the **9 acres** of unregistered piece of land at **Langas within Eldoret** to the administrators/beneficiaries of the estate.
2. The application is based on the grounds that at the time the grant was confirmed on 22/3/2003, the applicants were minors and were not consulted. The then administrators gave 9 acres of unregistered parcel of land at Langas within Eldoret to their mother (who is the applicants' grandmother).
3. That the said parcel of land was part of the applicant's deceased parent's estate and their grandmother has since passed on although the land had not been transferred to her.
4. The applicants are now the administrators of the estate of the deceased herein and it is fair that the land be given to them. Further, that due to the fact that some administrators were intermeddling with the estate of their parents, they were removed by the court and replaced by the applicants.
5. At that time, they did not interfere with the use of the land held by their grandmother although they did not transfer the land to her.
6. **Michael Peter Njoroge** (the respondent) opposes the application through a replying affidavit where he describes the application as a mere calculation to defeat the rightful entitlement of **Susan Wanjiru Njoroge**, after the applicants have squandered and wasted their share of the estate
7. That the respondents together with Susan Wanjiru Njoroge were the only beneficiaries of the estate of Morrison Muhika Njoroge and that she got her rightful share of the estate, being the said 9 acres.
8. The application was canvassed by written submissions. The applicants submitted that Susan Wanjiru was the mother of Morrison, and was neither the spouse nor child of Morrison.
9. It is argued that under the Law of Succession Act, priority is given to the children of the deceased over the parents of the deceased in the event that the deceased has left surviving children.
10. Section 38 of the Law of Succession Act **provides; where an intestate has left a surviving child or children but no spouse, the net 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.**
11. They rely on the case of **Christine Wangari Gichigi v Elizabeth Wanjira Evans & 11 Others (2014)** where *the court was of the opinion that for one to inherit under Section 38 of the Law of Succession Act, the person is only required to prove that he/she is the child of the deceased.*

12. It is their contention that parents can only inherit in the event that the deceased left no surviving spouse or children. **Section 39(1)(a) and (b) of the Law of Succession Act** provides;

**(1) Where an intestate has left no surviving spouse or children, the net intestate estate shall devolve upon the kindred of the intestate in the following order of priority—**

**(a) father; or if dead**

**(b) mother; or if dead.**

**(c) brothers and sisters and any child or children of the deceased brothers and sisters, in equal shares.**

13. That **Susan Wanjiru Njoroge** was therefore not a beneficiary of any part of the estate of Morrison, and was only holding in trust the 9 acres of land for the benefit of the applicants as they were minors at the time of Morrison's death, and now that they have become of age it is their right to take over the disputed parcel of land.

14. The applicants further relied in **Nairobi Cause No. 2015 of 2012 In the matter of the Estate of Joshua Orwa Ojode (Deceased)** Musyoka J opined that:

*“Going by the above provision, where a deceased person is survived by spouse and children or children, the other relatives are not entitled to a share in the intestate estate of such person. The spouse and children are entitled to the estate to the exclusion of all other relatives.”*

15. The respondent on his part submitted that pursuant to the confirmed grant, the deceased's mother, Susan Wanjiru Njoroge was allocated the 9 acres of land that is in contention.

16. He acknowledges that when the respondents became of age, they applied to be the administrators of their deceased parent's estate. The distribution of the estate was however untouched and **Susan Wanjiru Njoroge** continued to use the land until her demise on 24/7/2005. It is contended that the fact that transmission and the registration of the property to Susan's named not taken place, did not mean that the property was not hers.

17. Further, that the respondents cannot come to argue that because the property had not been transferred and registered in Susan's name, then the land is not hers and that it should revert back to the estate.

18. Michael Peter Njoroge maintains that being the only surviving child of Susan Wanjiru Njoroge(deceased), it follows that he should be the rightful owner of the property.

#### **ANALYSIS AND DETERMINATION**

19. The background to this matter is that the applicants are the children of the late **MORRISON MUHIKA NJOROGE and his wife LOISE WAMERE MUHIKA** died and were survived by Morrison's mother (**SUSAN WANJIRU NJOROGE**, and his two children **ELIZABETH AND STEPHEN** (who were then minors). The deceased's three brothers namely **CLEMENT KINUTHIA NJOROGE, MICHAEL PETER NJOROGE, JOHNSON MBURU KARICHU and GERALD MUHIKA NJOROGE** petitioned and obtained grant of letters of administration for his estate.

20. The assets were distributed to the effect that **Susan Wanjiru Njoroge got the 9 acre unregistered piece of land in Langas, while the applicants jointly got in equal shares;**

**a) ELDORET MUNICIPALITY BLOCK 6/55,**

**b) ELDORET MUNICIPALITYBLOCK 14/224**

**c) ELDORET MUNICIPALITY BLOCK 12/70**

**d) 1/8 OF AN ACRE AT MUNYAKA(UNREGISTERED)**

**e) PIONEER/NGERIA BLOCK 1 (EATEC) 625 being 5 acres in Eldoret (undeveloped)**

**f) PIONEER/NGERIA BLOCK 1 (EATEC) 624 being 5 acres in Eldoret (unregistered)**

**g) PIONEER/NGERIA BLOCK 1 (EATEC) 621 being 5 acres in Eldoret (undeveloped)**

**h) 1171 SHAERES IN NATIONAL INDUSTRIAL CREDIT BANK**

**i) 3332 SHARES IN HOUSING FINANCE CO. KENYA LTD**

**j) SUMS OF MONEY HELD IN 4 SEPARATE ACCOUNTS AT HOUSING FINANCE CO. KENYA LTD where Susan Wanjiru Njoroge got Kshs 1,000,000/- while the remainder of the monies were given to the two applicants in equal shares**

In the course of time, the applicants became of age and applied for, and were allowed to take over the administration of their parents' estate/ Their argument is that the 9 acres was only given to Susan to use during her lifetime, and upon her death, the same reverted to the applicants as administrators of the estates. Michael is referred to as a busy body who has no right to make a clam to the estate

When Susan passed away on 24<sup>th</sup> July 2020, her son **MICHAEL PETER NJOROGE**, by an application dated 18<sup>th</sup> September 2019, sought to have the grant amended to include him as a beneficiary of his mother's property (being the 9 acres which had not yet been transmitted to her. Elizabeth and Stephen also applied to have the same certificate of grant amended to include them as the beneficiaries of the same property.

Who is the rightful beneficiary of the 9 acre parcel?

Section 29 of the Law of Succession defines he meaning of dependant

As follows:

**21. For the purposes of this Part, "dependant" means—**

**(a) the wife or wives, or former wife or wives, and the children of the deceased whether or not maintained by the deceased immediately prior to his death;**

**(b) such of the deceased's parents, step-parents, grand-parents, grandchildren, step-children, children whom the deceased had taken into his family as his own, brothers and sisters, and half-brothers and half-sisters, as were being maintained by the deceased immediately prior to his death;**

22. This means that Susan fell in category (b) as a parent of the deceased and if the applicants are of the view that she was not entitled to inherit, then they ought to have sought revocation of the grant, and not a simple amendment. From the confirmed grant the 9 acres was given to Susan, and there is nothing whatsoever to suggest that she was holding the same in trust for the applicants (who by the way got several other properties given to them directly thus defeating the claim about trusteeship). There is also nothing to suggest that she would only have a life interest in the property, and there is nothing to warrant such inference being drawn, as she was not a spouse of the deceased, so as to have such limitations imputed.

**Section 66(b) of the Law of Succession Act** provides that the persons given priority over an intestate are the surviving spouse and children.

23. In this case, it is not in dispute that the deceased Morrison Muhika Njoroge died intestate leaving behind minor children and no surviving spouse. It is also not in dispute that the applicant and her deceased mother was granted letters of administration to administer the deceased estate on behalf of the deceased children who were minors at that time.

24. While indeed distribution of his estate was thus governed by Section 38 of the Law of Succession Act which provides that;

***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 be equally divided among the surviving children.***

25. It would be myopic for this court to read the above provision in exclusion of section 29 (b) which recognizes the place of Susan in the inheritance equation. I find that Susan did not hold the 9 acres of land in Langas within Eldoret in trust for the applicants and they cannot claim a share of it.

26. The fact that transmission has not been concluded does not in any way nullify the distribution. However, I do not think Micheal can be introduced into the ownership of the property just by a stroke of the pen. Since Susan had other children her survivors must file a succession cause in relation to her estate, and make proposals on the mode of distribution, once transmission is effected.

The upshot is that neither of the applications for amendment succeeds, and both are dismissed. Each party shall bear its own

costs.

**Virtually delivered and dated this 24<sup>th</sup> day of November 2020 at**

**Eldoret**

**H. A. OMONDI**

**JUDGE**

**Mr Kimani for respondent**

**Miss Achaya for applicants**

**C/A Komen**