



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERUGOYA

SUCCESSION CAUSE NO. 451 OF 2013

(FORMERLY SUCCESSION CAUSE NO.98/1998 KERUGOYA)

IN THE MATTER OF THE ESTATE OF JAPHET NJAGI SIMEON GIKUNJU (DECEASED)

HARRY WACHIRA NJAGI.....APPLICANT

VERSUS

JOSIAH GICHANGI NJAGI.....PROTESTOR/RESPONDENT

R U L I N G

The matter pending before this court is the application dated 10th January 2019 filed by Harry Wachira Njagi and seeks orders for revocation/annulment of the grant issued on 11th December 2018 be confirmed. The background of this matter is that it relates to the estate of Japhet Njagi Gikunju (deceased) who died intestate on 20th October 1997. A grant of letters of administration was issued to Grace Kanini who is the wife of the deceased. The grant was later confirmed on 7th May 1999. The estate of the deceased comprised in land parcel No. Mutira/Kirimunge/334 was distributed to John Kariuki Njagi (son) Josiah Gichangi Njagi (son), Francis Ndegwa Njagi (son) and Grace Kanini Njagi (wife) in equal shares.

Later before the grant was enforced, the Petitioner Grace Kanini Njagi passed away on 19th July 2012. Harry Wachira Njagi filed an application to substitute the administratrix and was substituted on 21st September 2017. Thereafter on 11th December 2018 the grant was revoked. The court ordered that a fresh grant of letters of administration be issued to Harry Wachira Njagi. The administrator filed an application for confirmation of grant dated 10th January 2019. An affidavit of protest was filed by Josiah Gichangi Njagi. He avers that the deceased was survived by the following.

- i. Susan Wambui Kamunyo - daughter
- ii. John Kariuki Njeru - son
- iii. Sophia Nyaguthi Njeru - daughter
- iv. Catherine Mumbi Njagi - daughter
- v. Joyceline Nyawira Njagi - daughter
- vi. Francis Ndegwa Njagi - son
- vii. Harry Wachira Njagi - son
- viii. Josiah Gichangi Njagi - son
- ix. Christopher Gitari Njagi - son

The protestor contends that their mother Grace Kanini Njagi as administrator had distributed the estate in Succession Cause No.98/1998 in the Magistrate's Court. He proposes that the estate be distributed as follows:-

- i. John Kariuki Njagi - 2 Acres

- ii. Josiah Gichangi Njagi - 2 Acres
- iii. Francis Ndegwa Njagi - 2 Acres
- iv) Sophia Nyaguthi Njeru
- (v) Catherine Mumbi Njagi 2 Acres equal shares
- (vi) Susan Wambui Kamunyo
- (vii) Joyceline Nyawira Njagi

The petitioner avers that the estate being Land Parcel No. Mutira/Kirimunge/334 be distributed as follows:-

- i. Sophia Nyaguthi Njeru - 1 Acre
- ii. Catherine Mumbi Njagi - 1 Acre
- iii. Susan Wambui Kamunyo - 1 Acre
- iv. Joyceline Nyawira Njagi - 1 Acre
- v. Francis Ndegwa Njagi - 2 Acres
- vi. John Kariuki Njagi - 2 Acres

The protest was disposed off by way of written submissions. The protestor submits that the estate was distributed as per the certificate of grant issued on 7th May 1999. This grant was however revoked before it was enforced and cannot be relied on as it has become useless and in-operative through subsequent circumstances, **Section 76 (e) of the Law of Succession Act (Cap 160 Laws of Kenya)** refers.

The protestor submits that the daughters have been given two acres which had earlier been given to their mother who is now deceased.

It is also submitted that Land Parcel NO. Mutira/Kianjege/1148 is the subject matter in **Chief Magistrate's Court Criminal Case No.422/2014** and is not therefore free from distribution. He submits that the mode of distribution by the protestor is free and fair.

For the administrator it is submitted that his mode of distribution is consented to by six beneficiaries. He submits that the protestor has already inherited four acres which is a bigger portion than the one the other beneficiaries are getting.

I have considered the application. The issue which arises for determination is distribution of the estate of the deceased.

The protestor and the administrator are all children of the deceased. The grant which was issued in the Magistrate's Court was revoked. There is no evidence on record to show that the grant was enforced. The protestor had filed an application dated 28th March 2013 seeking orders that the executive officer be authorized to sign the documents on behalf of the respondents, the Registrar Kirinyaga dispense with the production of the old title deed and the officer- in- charge Kerugoya Police Station to provide security. This application was not heard and determined. It is surprising how the protestor managed to be registered over the land parcel No. Mutira/Kirimunge/1148 forming the estate of the deceased when the administrator had not signed the necessary documents to effect sub-division and transfer. The petitioner had demonstrated that the protest has been charged with fraudulent acts in the Chief Magistrate's Court Kerugoya. He has also demonstrated that the protestor sold the land to Gachoki Wilson Kibara as shown on the green card. There was no evidence tendered to prove that the administrator had signed the documents to transfer to the seller. The deceased could not give a gift of receive land after his death. There is more than meets the eye on the manner in which the Land Parcel No. Mutira/Kirimunge was dealt with.

The Law of Succession Act makes it an offence for any person to inter-meddle with the estate of a deceased person.

Section 45 of the Act provides:-

"1. Except so far as expressly authorized by this Act, or by any other written law, or by a grant of representation under this Act, no person shall, for any purpose, take possession or dispose of, or otherwise intermeddle with, any free property of a deceased person.

2. Any person who contravenes the provisions of this section shall-

(a) be guilty of an offence and liable to a fine not exceeding ten thousand shillings or a term of imprisonment not exceeding one year or to both such fine and imprisonment; and

(b) be answerable to the rightful executor or administrator to the extent of the assets with which he has intermeddled after deducting any payments made in the due course of administration."

The protestor acquired land parcel No. Mutira/Kirimunge/1148 otherwise than as provided by the **Law of Succession Act**.

The Law of Succession advocates equal distribution to the siblings. In this case distribution is under **Section 38 of the Law of Succession Act** which provides:-

“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.”

The protestor has already acquired Land Parcel No. Mutira/Kirimunge/1148 measuring 1.56 Ha. The Green Card shows that it was a partition of parcel No.130. This suggest that there is another parcel which has not been disclosed. It is clear that the protestor has intermeddled with the estate of deceased. The applicant and his siblings apart from the protestor are entitled to a share of the estate of the deceased. The estate, Land Parcel No. Mutira/Kirimunge/334 measures 3.24 Ha. The distribution proposed by the administrator is fair as the applicant and the other beneficiaries will get smaller portions than what the protestor got. The beneficiaries have also signed a consent to the mode of distribution proposed by the administrator.

Although the mode of distribution shows that some of the beneficiaries will get a smaller portion, since they have signed a consent on the proposed mode of distribution, they have voluntarily relinquished the right to get an equal share.

In conclusion I find that the protest has no merits and is dismissed. I order that the estate of the deceased comprised in land parcel **No. Mutira/Kirimunge/334** be distributed as follows:

- vii. John Kariuki Njagi - 2 Acres
- viii. Sophia Nyaguthi Njeru - 1 Acre
- ix. Catherine Mumbi Njagi - 1 Acre
- x. Susan Wambui Kamunyo - 1 Acre
- xi. Joyceline Nyawira Njagi - 1 Acre
- xii. Francis Ndegwa Njagi - 2 Acres

The grant issued to the Petitioner on 12th October 2017 is confirmed and a certificate of confirmation of grant to issue.

Dated, signed and delivered at Kerugoya this 17th day of November 2020.

L.W. GITARI

JUDGE