



**REPUBLIC OF KENYA**

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

**SUCCESSION CAUSE NUMBER 271 OF 2004**

**IN THE MATTER OF THE ESTATE OF RUTH NYAKIO NG'ANG'A (DECEASED)**

**JUDGMENT**

1. Ruth Nyakio Ng'ang'a (deceased) died on 15/10/2001. Jane Njeri Ng'ang'a lodged a petition for letters of administration on the 26/5/2004. The beneficiaries of the deceased are listed as;

1. Peter Mwangi Ng'ang'a - son
2. Jane Njeri Ng'ang'a - daughter
3. Rose Wangari Ng'ang'a - daughter

2. The assets comprising the estate listed in the P & A 5 form by the petitioner are listed as;

1. Marigu Block A
2. Solai Arutani Block 1/180
3. Solai Arutani Block 1/181

3. By a summons dated 5/5/2006 the petitioner sought to include other properties being;

1. Plot 584/63 Londiani
2. Plot No. 290 Keringet
3. Plot No. 815 Nyandarua Progressive Union

This application was withdrawn on 21/7/2006. The properties were later included in the summons for confirmation of grant dated 7/2/2007.

4. In the summons for confirmation of grant dated 7/2/2007, the petitioner proposed to distribute the assets as hereunder;

- (i) SOLAI/ARUTANI BLOCK 1/180 whole share in the names of Jane Njeri Ng'ang'a.
- (ii) SOLAI ARUTANI BLOCK 1/181 whole share in the names of Jane Njeri Ng'ang'a.
- (iii) PLOT 290 ARIMI "B" whole share of Peter Mwangi
- (iv) NYANDARUA PROGRESSIVE 815 whole share to Rose Wangari
- (v) PLOT 584/63 LONDIANI whole share to be sold and divided in equal shares
- (vi) PLOT NO. 290 KERINGET to Peter Mwangi (whole share)

5. By a consent of the parties recorded before **D. K. Maraga J** (as he then was), it was agreed that the properties in contention were the first two and the fifth one in the affidavit of support. These are;

i) Solai Arutani Block 1/180

ii) Solai Arutani Block 1/181

iii) Plot Number 584/63 Londiani

It was directed that the matter be resolved by way of viva voce evidence.

6. The uncontested evidence is that land parcels Solai/Arutani Block 1/180 and Block 1/181 were registered in the names of the deceased Ruth Nyakio Ng'ang'a. They were thus free property of the deceased which is defined in **Section 3(1)** of the **Law of Succession Act** as;

**“Free property in relation to a deceased person, means the property of which that person was legally competent freely to dispose during his lifetime, and in respect of which his interest has not been terminated by his death.”**

7. Indeed, aware of this fact, the petitioner listed these properties in the form P & A 5 as assets of the deceased.

8. In a strange twist, the petitioner claims the 2 properties as having been transferred to her by her father way back on 13/3/1987. She insinuated that the acquisition of the title by Ruth Nyakio Ng'ang'a (the deceased) was fraudulent.

9. The fact of the matter is that she has not taken the appropriate steps to legally challenge the said titles. As at the time of the demise of the deceased, the properties legally belonged to her and formed part of her estate.

10. Similarly, the claim by Rose Wangari Ng'ang'a that she was given plot number 180 by the deceased and the claim by Peter Mwangi Ng'ang'a that he was given plot number 18 is not supported by evidence. The proven fact is that these 2 properties were in the names of the deceased at the time of her death.

11. The administrator and the 2 other beneficiaries are children of the deceased. The applicable law on distribution would be **Section 38** of the **Law of Succession Act**. That Section provides;

**“S. 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 be equally divided among the surviving children.”**

12. I note there are rival allegations and counter allegations between the parties as to bequests to the beneficiaries during the lives of their parents.

13. The objectors allege that the petitioner was given parcel numbers Solai/Arutani Block 2/364 and 365. The petitioner asserts that she bought these parcels. She produces three (3) receipts for Kshs. 5,000/=, 21,000/= and 64,000/= respectively.

14. The petitioner asserts that Rose Wangari was given land by their father being Nyandarua Progressive 815 (4 acres) and that Peter Mwangi Ng'ang'a was given plot number 290 Keringet (2 acres). The beneficiaries deny this.

15. A distinction must be drawn between the properties forming the estate of the parties' father (who is also deceased) and the properties belonging to the mother of the parties. Any gifts *inter vivos* given by Ng'ang'a Mbuthia, the father of the children herein only become relevant when sharing out the estate of Ng'ang'a Mbuthia and not Ruth Nyakio Ng'ang'a.

16. To that extent, the evidence on record from both sides has not on a balance of probabilities proved that any of the beneficiaries was given land by the deceased herein during his lifetime.

17. This holding, then, ousts the application of **Section 42(a)** of the **Law of Succession Act** in the distribution of the estate of Ruth Nyakio Ng'ang'a. That Section provides;

**“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, that property shall be taken into account in determining the share of the net intestate estate finally accruing to the child, grandchild or house.”**

18. From the foregoing the applicable law in the distribution of the estate of the deceased would be **Section 38** of the **Law of Succession Act**.

19. The beneficiaries are all children of the deceased. Their entitlement according to the law is an equal share from the net estate of the deceased. The net estate comprises of parcel of land numbers Solai/Arutani/block 1/180, 181 and plot number 584/63 Londiani.

20. There is a suggestion by the protestors in submissions that the sharing out of Solai/Arutani Block 1/180 (Marigu) should take into account developments carried out by beneficiary Rose Wangari Ng'ang'a.

21. The record clearly shows a long standing dispute between the parties that has sucked in the provincial administration and the police. At one time, it appears Rose Wangari Ng'ang'a was convicted over offences related to the land. Indeed a court order dated 16/6/2006 is exhibited restraining Rose from interfering with the land. If she continued developments, then that was at her own peril.

22. Within this background, the legal standing of any developments Rose may have done on the land faces ferocious headwinds and this court is unable to come to her aid.

23. I therefore confirm the grant of letters of administration issued to Jane Njeri Ng'ang'a on the 22<sup>nd</sup> day of October, 2004 and order distribution of assets in the following terms;

**SCHEDULE**

**BENEFICIARY DESCRIPTION OF PROPERTY SHARE**

Jane Njeri Ng'anga Solai/Arutani/Block 1/180 Equally

Rose Wangari Ng'ang'a

Peter Mwangi Ng'ang'a

Jane Njeri Ng'anga Solai/Arutani/Block 1/181 Equally

Rose Wangari Ng'ang'a

Peter Mwangi Ng'ang'a

Jane Njeri Ng'anga Plot No. 584/63 Londiani Equally

Rose Wangari Ng'ang'a

Peter Mwangi Ng'ang'a

**Dated and Signed at Nakuru this 31<sup>st</sup> day of January, 2019.**

**A. K. NDUNG'U**

**JUDGE**