



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI

SUCCESSION CAUSE NO. 1 OF 2012

IN THE MATTER OF THE ESTATE OF WAWERU NDEGWA (DECEASED)

CECILIA WAMBUI WAWERU.....PETITIONER

VS.

ESTHER WARUGURU NDEGWA.....PROTESTER

JUDGMENT

The only issue for determination here is how the estate of Waweru Ndegwa comprising of AGUTHI/GAKI.140 2.6 HA should be distributed among his seven beneficiaries- six daughter and one daughter in law.

Cecilia Wambui Waweru was issued with grant of letters of administration intestate on 11th July 2012.

She filed summons for confirmation of the grant on eighth March 2016 where she sought that the land be shared equally between her and her sister in law Esther Waruguru Ndegwa. All the other beneficiaries signed the consent dated 2nd March 2016 except Esther.

Esther filed an affidavit of protest on 18th April 2016. She deponed that she and her husband had occupied 2.1 acres of the land while her sister in law had occupied only 0.5 acres. She proposed that the estate be distributed in that manner because in addition her parents' in law and her husband were all buried on the 2.1 acre portion she occupied.

In response, Cecilia swore an affidavit on 13th June 2016 filed on 16th June. At paragraph 10 she deponed 'I have disregarded the earlier distribution of land no Nyaki/Gaki/140 into two equal portions which had denied the other daughters their rightful shares of their father's estate.

Another daughter Lucy Njeri Mathenge of the deceased swore an affidavit on 20th April 2018 on behalf of herself and her other sisters supporting Cecilia's position.

The protestor also had three witnesses who filed witness statements.

Parties proceeded by way of written submissions.

I have carefully considered the submissions on record and the witness statements. It appears to me that the protestor and the petitioner are the ones who were living on the parcel of land with the deceased and his wife. The deceased died intestate and except for the witness statements to the effect that the petitioner was only entitled to the land where her mother was cultivating, and that the deceased had shared out his property there is nothing else to support that position.

I note that the Petitioner's affidavit refers to LR no Nyaki/Gaki/140 which is not part of the deceased's estate in this cause. The one in dispute is Aguthi/Gaki/140. Secondly I did not see in the chief's letter a beneficiary by the name Lucy Njeri Mathenge. The name there is Lucy Nyawira Mathenge, and the one whose name appears in the Consent document is one Lucy Njeri Waweru. So who is this Lucy Njeri Mathenge?

The consent signed on 2nd March 2016 will be dislodged by another consent with an explanation. It appears to me this apparent change of mind simply arises out of the protestor's position that she deserves a bigger share of the estate. That is why Cecilia's affidavit is not about justice for her sisters, but competing interests over the inheritance. It is about her and not her sisters. That is what paragraph 10 of her affidavit states. That is why it takes two years for another 'sister' to swear an affidavit to support her position. That is why Cecilia's affidavit was not accompanied by a consent dislodging the other consent.

The court is not the place to play the whimsical 'I will show you' ping pong. To accept the purported 'change' of mind by the sisters to Cecilia would be to allow parties to play games with the law. She is the administrator, she set out a mode of distribution which was consented to by all the other beneficiaries except the protester. She was aware of their alleged entitlement; they were aware as well but they chose to consent to that mode of distribution. No reason has been given for the change of mind. None except, whim.

I have also considered the protest. The witnesses did not testify and did not bring themselves up for cross examination. Their statements however were not challenged with any rival evidence by the petitioner.

Never the less, it is my view that the protest has no merit.

The grant issued to Cecilia Wambui Ndegwa on 11th July 2012 is confirmed as per the Summons for confirmation of grant dated 2nd March 2016, the LR Aguthi/Gaki/140 be shared into two equal shares by the petitioner and the protester.

Each Party to bear its own costs.

Dated, delivered and signed at Nyeri this 25th day of January 2019.

Mumbua T Matheka

Judge

In the presence of:

Jerusha-Court Assistant

Waweru Macharia holding brief for Kimunya for petitioner

Kinuthia holding brief for Kariuki for protester.

Mumbua T Matheka

Judge

25/1/19