



## REPUBLIC OF KENYA

### IN THE HIGH COURT OF KENYA AT NAIROBI

#### SUCCESSION CAUSE NO. 2556 OF 2008

#### IN THE MATTER OF THE ESTATE OF MBUGUA KIMANI (DECEASED)

### RULING

#### FACTS

The deceased **Mbugua Kimani** died testate on the 27<sup>th</sup> April 2006.

The Applicants filed petition for probate with **Will** annexed in Thika Chief Magistrate's Court and later in High Court on 5<sup>th</sup> November 2008. Annexed to the application is **Will** of 29<sup>th</sup> March 2005.

The **Grant of Probate** was issued on 5<sup>th</sup> March 2008 by **L.J.Rawal** to **John Maina Mbugua of P.O.Box 1023 Thika** as **Executor** and amended by Hon **J W.Musyoka** on 30<sup>th</sup> January 2013( In the Will he is not named as Executor and there are no written consents from beneficiaries that he is the Executor of the Will.)

On 16<sup>th</sup> March 2010, John Maina Mbugua filed **Summons for Confirmation of Grant of Probate** issued on 5<sup>th</sup> March 2008. He listed the beneficiaries of the estate of the deceased (but not according to the Will or the Petition for grant of Probate) and the list of assets that comprise of the estate of the deceased and the proposed mode of distribution which is not also according to the Will.

On 14<sup>th</sup> October 2018 another summons for confirmation of grant was filed with different lists of beneficiaries , assets and proposed mode of distribution.

Both summons for confirmation applications do not contain written consents from beneficiaries on distribution of the deceased's estate.

Joseph Kimani Mbugua by letter 21<sup>st</sup> February 2014 declined consent to the summons for confirmation and protested.

Joseph Kimani Maina filed Further **Affidavit of Protest** against confirmation of grant filed on 10<sup>th</sup> December 2014.

Joseph Kimani Mbugua filed **Affidavit of Protest** against confirmation of grant on 6<sup>th</sup> November 2014.

Mary Wangui Maina filed **Affidavit of Protest** against Confirmation of grant on 6<sup>th</sup> November 2014.

Joseph Kimani Maina Filed **Affidavit of Protest** against Confirmation of Grant on 6<sup>th</sup> November 2014.

#### PROCEEDINGS

On 20<sup>th</sup> September 2016, 3 members of the deceased's family attended Court; namely Joseph Kimani Maina , Mary Wangare Mbugua and Joseph Kimani Mbugua.

On 5<sup>th</sup> October 2016 Joseph Kimani Mbugua testified on the basis of his protest to the summons for confirmation; that the administrator's claim to purchase of some properties was not confirmed, he did not file accounts on management of the estate, he left out some assets that are part of deceased's estate and the proposed sharing of the estate is not fair.

In cross-examination; he stated that the Will was not by the deceased, it did not appoint the Executor, he was not invited and/or consulted on the appointment of Executor among other issues raised.

On 16<sup>th</sup> November 2016, Joseph Kimani, John Maina, Nganga Mbugua, Mary Wangui, Joseph Kimani, Wilson Mbugua and Moses Irungu attended Court and sought the Will be translated first before each party could consent or object to the Will.

On 29<sup>th</sup> October 2018 the beneficiaries attended Court and some objected to the Will and others agreed to it. The Court was presented with the following Wills;

*a) Will of 29<sup>th</sup> March 2005 (typed and is in English)*

*b) Will of 20<sup>th</sup> January 2001(handwritten and Kikuyu)*

*c) Will of 20<sup>th</sup> January 2001(typed and in English)*

#### **DISPOSITION**

- 1. The matter is parheard on protests against summons for confirmation of grant applications.**
- 2. There are more than 1Will of the deceased and it is not clear which of them legally is the valid Will of the deceased.**
- 3. The List of beneficiaries of the deceased's estate is not consistent and confirmed; it is different in different documents.**
- 4. There are protests filed contesting lists of assets that comprise the deceased's estate.**
- 5. There are protests Filed contesting the proposed modes of distribution of deceased's estate.**
- 6. There are objections to the Will(s) and modes of distribution and whether the estate should be distributed as per the valid Will of deceased or as an intestate estate.**
- 7. This Court is on transfer and cannot hear and determine the matter.**
- 8. The matter shall be heard and determined in any court within the Family Division.**

**DELIVERED SIGNED & DATED IN OPEN COURT ON 22<sup>ND</sup> JANUARY 2019.**

**M. W. MUGAI**

**JUDGE-FAMILY DIVISION**

#### **IN THE PRESENCE OF:**

**NGANGA EPHRAIM MBUGUA – SON OF DECEASED**

**JOHN MAINA – SON OF DECEASED**

**MARY WANGUI MBUGUA- DAUGHTER OF DECEASED**

**JOSEPH KIMANI MBUGUA- SON OF DECEASED**

**WILSON RURO- ABSENT**