



**REPUBLIC OF KENYA**

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

**SUCCESSION CAUSE NO. 236 OF 1996**

**(IN THE MATTER OF THE ESTATE OF BARNABAS GITHAIGA NGURU (DECEASED))**

**SAMUEL GITHINJI THEURI.....ADMINISTRATOR/APPLICANT**

**-VERSUS-**

**FRANCIS NDEGWA GITONGA.....ADMINISTRATOR/PROTESTOR**

**JUDGMENT**

Barnaba Githaiga Nguru died intestate on 15<sup>th</sup> September, 1995 aged 81. He was then domiciled in Kenya and his last known place of residence was Kiaragama location in Nyeri County.

On 22<sup>nd</sup> August, 1996, the applicant petitioned this court for grant of letters of administration of the deceased's estate. He described himself in the affidavit in support of the petition as the deceased's 'step-son' and was, apparently, the only person surviving him.

The protestor objected to the grant being made to the applicant mainly on the ground that the deceased was his (the objector's) grandfather and further that the deceased had made his wishes known that the objector would inherit his entire estate. He also stated that he was entitled to the estate because he had taken care of the deceased in his sunset years.

Despite the objection, the grant was eventually made in the joint names of the applicant and the protestor on 15<sup>th</sup> February, 2006. Five years later, more particularly on 24<sup>th</sup> January, 2011, the applicant filed a summons for confirmation of grant in which he sought to have the deceased's estate comprising of land, Title No. Nyeri/Ngaringiro/168 measuring approximately 3.0 hectares devolve upon him exclusively.

The protestor filed an affidavit protesting against the confirmation of grant in the terms proposed by the applicant basically on the same grounds that he objected to the grant being made to the applicant.

At the hearing of the protest both parties were in agreement that the deceased was not survived by any immediate member of his family; that is, he neither had a spouse or child. Both his parents apparently predeceased him and he had no known sibling.

Where an intestate dies in these circumstances, section 39 of the Law of Succession Act comes into play; that section reads as follows:

***39. (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 deceased brothers and sisters, in equal shares; or if none**

**(d) half-brothers and half-sisters and any child or children of deceased half-brothers and half-sisters, in equal shares; or if none**

**(e) the relatives who are in the nearest degree of consanguinity up to and including the sixth degree, in equal shares.**

**(2) Failing survival by any of the persons mentioned in paragraphs (a) to (e) of subsection (1), the net intestate estate shall devolve upon the State, and be paid into the Consolidated Fund.**

A claim to a deceased's estate where no immediate heirs are apparent is thus defined by the claimant's degree of consanguinity to the deceased; the closer the claimant is related to the deceased, the greater the chances of his inheritance of the latter's estate.

Turning back to the case at hand, the protestor testified that his grandmother was a sister to the deceased and it is because of this relationship that he regarded the deceased as his grandfather. However, apart from his own testimony, there was no evidence of such relationship or any other family relationship remotely linking him to the deceased.

As a matter of fact, counsel for the protestor never made reference to any relationship between the deceased and the protestor except to say that they were close in the deceased's lifetime and that the deceased made 'declarations' on devolution of his estate in favour of the protestor.

The protestor acknowledged, however, that the deceased and the applicant's father were brothers and therefore it was not in dispute, as the applicant contented, that he (the applicant) was the deceased's nephew. This being the case, the protestor has no legal basis to lay any claim on the deceased's estate.

It may as well be true, as the protestor himself has suggested, that he took good care of the deceased in his last days on earth. If, in his opinion, he is entitled to some sort of reward or pay for the services rendered, then he can only claim against the estate; his purported claim cannot possibly be a basis for inheritance of the deceased's estate.

As far as the 'declarations' the deceased is alleged to have made are concerned, all I can say is that the so-called declarations are of no consequence unless they were reduced in a formal will, oral or written. In the absence of any evidence of either form of will, this court cannot give effect to the alleged 'declarations.'

In the final analysis, I do not find any merit in the protestor's protest and it is hereby dismissed. In the same breath, I allow the summons for confirmation of grant dated 24<sup>th</sup> January, 2011 to the extent that the deceased's estate, being Title No. Nyeri/Ngaringiro/168 shall devolve upon the applicant absolutely.

For completeness of record, I need add that if the deceased had sold any part of the estate, that portion of the estate shall be transferred to the purchaser upon payment of the stamp duty. There shall be no order as to costs. Orders accordingly.

**Dated, signed and delivered in open court this 22<sup>nd</sup> day of February, 2019**

**Ngaah Jairus**

**JUDGE**