



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI

SUCCESSION CAUSE NO. 654 OF 2012

IN THE MATTER OF THE ESTATE OF KARIITHI GATUGI (DECEASED)

AND

GLADYS WANJIKU GATUGI.....1ST PETITIONER

LUCY WANJIKU NGETHA.....2ND PETITIONER

VERSUS

MICHAEL WAWERU THINWA.....1ST PROTESTOR

JUDGMENT

Kariithi Gatugi died on 14th November 1979. He was survived by:-

1. Mary Nyaguthii Thinwa
2. Gladys Wanjiku Gatugi
3. Esther Wamuyu Ngetha
4. Lucy Wanjiku Ngetha
5. Margaret Wanjeri Muriuki

He left behind LR Magutu/Gatei/425 as his estate

A grant was issued to Mary Nyaguthii Thinwa and Esther Wamuyu Ngetha on 20th November 2012.

However, on 6th June 2013 Esther Wamuyu Ngetha filed Summons for confirmation of grant dated 24th May 2013 where the estate was to be shared as follows:-

- a. Gladys Wanjiku Gatugi -1.35 Acres
- b. Esther Wamuyu Ngetha -0.675 Acres
- c. Lucy Wanjiku Ngetha -0.675 Acres

Mary died on 22nd September 2013 before the grant was confirmed. She was survived by the following:

- a. Michael Waweru Thinwa
- b. Lucy Nyawira Thinwa
- c. Jackson Muriuki Kinyua

d. Lydia Njeri Kinyua

e. Peter Kareithi Kinyua

f. Grace Gathoni Wang'ombe

Esther had passed away on 10th January 2014 and an application was filed on 9th September 2015 to revoke the grant. A fresh one was issued to Lucy Wanjiku Ngetha and Gladys Wanjiku Gatugi on 19th February 2017. The 2 applied for confirmation of the grant vide summons for confirmation of grant dated 30th June 2018. In it they proposed to share the whole estate equally between themselves.

That provoked an affidavit of protest by Michael Waweru Thinwa sworn on 12th October 2018 where he argued that the property ought to be shared equally among the children of his grandfather whereby his mother's share would go to him and his siblings.

He had obtained letters of administration ad litem for his mother's estate on 7th November 2018.

The petitioners responded to the effect that the protestor's mother never expressed any desire in the said property before her death, because she was living at her husband's home. That they wholly depended on the Estate, and that the only reason why the protestor wanted the land is because of its value because it borders Karatina University.

Counsel agreed to file written submissions.

By 29th January 2019 only Gathiga Mwangi for applicant had filed. M/s.Kamwenji Advocate for respondents had not filed despite getting 14 days extra to do so.

I have considered the summons for confirmation of grant, the affidavit of protest and the replying affidavit by the administrators, and the submissions by counsel.

The main ground for opposing not sharing the property among the children of the deceased is that the other children of the deceased were married daughters. That they the petitioners are the daughters in law of the deceased and they depend wholly on the estate. That the protestor and his siblings, live on their father's property where their mother left them and hence he has no reason to seek inheritance from his grandfather.

Further that the deceased had other grandchildren who have not come to claim anything from the deceased's estate.

The issue then is how should the estate of the deceased be distributed?

The issue of married daughters not inheriting or inheriting from their parents is settled. The law does not discriminate them and if they survived their parent they are entitled to inherit –that is the purport of Section 38 of Laws of Succession Act.

The respondent is not seeking to inherit his grandfather's estate but his mother's share of her inheritance. The protestor's mother was not a party to the summons for confirmation of grant that distributed the estate among her sisters in law and the one sister. She had not signed any consent to show that she had waived her right. She was actively involved in the administration of the estate for a reason. She could have easily left it to her sisters in law, the petitioners, to deal with the estate.

A perusal on that Summons for confirmation of the grant shows that the same was filed solely by Esther and she is the one who swore the supporting affidavit distributing the estate among one daughter and 2 daughters' in law. There is nowhere she had waived her right to her inheritance and that cannot come from the beneficiaries.

38. Where intestate has left a surviving child or children but no spouse

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 shall be equally divided among the surviving children.

There is no submission or evidence to send the court to sections 41 and 42 of the Law of Succession Act.

The protest succeeds. The Estate of the deceased to be distributed into four equal shares to provide for the four direct beneficiaries who include the two petitioners. The share for Mary Nyaguthii be registered in the names of her children to hold in equal shares.

No orders as to costs.

Dated, delivered and signed at Nyeri this 14th March 2019.

Mumbua T. Matheka

Judge

In the presence of:-

Court Assistant: Juliet

Gathiga Mwangi for Protester

Kamwenji on record for petitioners.

Mumbua T.Matheka

Judge

14/3/19