



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO.634 OF 2003

IN THE MATTER OF THE ESTATE OF EDWARD NG'ANG'A KABUE - DECEASED

RULING

1. The Deceased herein EDWARD NG'ANG'A KABUE died on 17th January 2003.
2. The deceased had three wives namely:
 - (i) **BEATRICE WANJIKU NGANGA**
 - (ii) **PHRACIA WANJIKU NGANGA**
 - (iii) **HELLEN GATHONI NGANGA (Deceased)**
3. The grant of Probate of the Estate was issued to PETER KABUE NGANGA, JAMES KABUE NGANGA AND PETER KABUU NGANGA, the executors of the Testator dated 21st July 1996.
4. Hon. Lady Justice Koome directed the said executors to file a summons for Confirmation and that the Applications by the objectors for reasonable provisions dated 16.7.2003 and 20/11/2003 be heard together by way of oral evidence.
5. After several applications, this matter was finally heard by this Court. The four objectors filed statements and also testified in this Court.
6. The objector's evidence in summary was that they are the daughters of the first wife Beatrice Wanjiku Nganga who is sickly.
7. The four objectors said the 1st house was treated unfairly and that the Will dated is not genuine and that the deceased did not have the mental capacity to make a Will at the time of his demise.
8. The objectors asked the Court to nullify the Will and to distribute the remaining estate apart from the Matrimonial Plots of their mother which she had acquired before the 2nd and 3rd wives were married which are as follows:
 - (a) **LIMURU/NGECHA 1618**
 - (b) **LIMURU/NGECHA 1619**
 - (c) **LIMURU/NGECHA 1616**
 - (d) **LIMURU/NGECHA 1617**
 - (e) **PLOT NO. LIMURU/RIRONI/T 304/1**
 - (f) **PLOT NO. LIMURU/RIRONI/T 304/25**
9. The Executors filed four Witness Statements, three by the executors and one by the 2nd wife of the deceased, PHRACIA WANJIKU NGANGA. The four gave oral evidence in Court and said that the deceased left a valid Will in which he provided for all the three houses.
10. I have considered the Witness Statements filed herein by all the witnesses together with their oral testimonies, I have also considered their submissions.

11. The issues for determination in the applications dated 16.7.2003 and 20.11.2003 are as follows:

(i) Whether the will dated 21/7/1996 is valid.

(ii) If it is valid, whether the 1st house was adequately provided for in the said Will.

(iii) Whether the executors have conducted themselves in accordance with the law.

(iv) Who pays the costs of the Applications.

12. The Objectors said the deceased suffered an accident which affected his mental health before he died. However, the Will is dated 21.7.1996. The deceased died on 17.1.2003.

13. I find that there is no evidence that at the time of making the Will the Testator was of unsound mind.

14. The will was signed by two witnesses and it was drawn by a lawyer. I find that it meets the basic requirements for a valid Will and it is therefore valid.

15. On the issue as to whether the 1st house was adequately provided for, I find that the testator gave his property to each of the sons in the three houses. He also gave his daughter all the money in Account No. 3548363 Barclays Bank Limuru in the Will. He directed the sons to look after their mothers.

16. I find that no one was left out in the bequest. The allegation that the 1st house was not provided for is therefore not true. The truth is that the objectors are not satisfied with what their father gave them in the Will. It is the duty of this Court to respect the last wishes of the testator as expressed in his will.

17. I find that there is evidence that the transfers of the said properties were effected in the year 2000 before the Testator died on 17.1.2005. I therefore find that the deceased had already given his property inter vivos and estate cannot be redistributed.

18. On the issue as to whether the executors have conducted themselves in accordance with the law, I find that the executors are duly bound to ensure that all the beneficiaries have received their entitlement as per the bequest in the Will.

19. I therefore direct the executors to table before this court all the transactions in the Bank Account named by the testator. The executors said the bank account was changed, they are under duty to avail the Bank Statements and to state how much was in the account and also to show how much each of the beneficiaries is entitled to.

20. I accordingly direct that this case be mentioned for the said bank statement to be availed.

DELIVERED, SIGNED AND DATED IN OPEN COURT THIS 26TH DAY OF APRIL, 2019

ASENATH ONGERI

JUDGE OF THE HIGH COURT OF KENYA, NAIROBI