



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

SUCCESSION CAUSE NO. 554 OF 2010

IN THE MATTER OF THE ESTATE OF KARIUKI MATHU (DECEASED)

JUDGMENT

1. The deceased Kariuki Mathu died on the 12/11/ 1966. On the 24/3/ 2010 John Njoroge Kariuki (now deceased) his son filed a petition for Grant of Letters of Administration Intestate. The assets listed in the said petition was a parcel of land Ngong/ Ngong/583. The persons listed as having survived the deceased as at 24/3/2010 were;

- a. Veronica Njambi Kariuki- widow (deceased)
- b. Monica Wacheke Kariuki- widow (deceased)
- c. George Njenga Kariuki –son (deceased)
- d. John Njoroge Kariuki- son
- e. Stephen Kairu Kariuki –son (deceased)
- f. Francis Martin Kamau Kariuki –son (deceased)
- g. John Kinyanjui Kariuki- son (deceased)
- h. Mrs. Monica Wamuhu Mungai- daughter- married
- i. Mrs. Lucy Wairu Ndichu- daughter-married
- j. Mrs. Cecilia Gathoni Kariuki- daughter-married

2. A grant of letters of administration intestate was issued on the **13/8/2010** to John Njoroge Kariuki (John). John died on the **2/5/10** the said grant was revoked and another grant issued to Mary Sekunda Wangui Kariuki (Mary) and Harriet Wangui Kariuki (Harriet) the daughters in law of the deceased on the **30th March 2011**. A Certificate of Confirmed Grant of Letters of Administration Intestate was issued to Mary and Harriet on the 26/10/2011.

3. On the **3rd October 2012** Cecilia Gathoni Kariuki and Lucy Wanjiru Ndichu daughters of the deceased filed a Summons under Section 76 of the Law of Succession Act seeking to have the grants of **30/3/2012** and **26/10/2012** revoked on grounds that the grant was confirmed fraudulently by making a false statement or by concealment from the court of something material to the case. That the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently.

4. On the **12th October 2012** Regina Njambi Kariuki the daughter of Harriet and granddaughter of the deceased filed a Summons dated the 12th October 2012 seeking to revoke the grant issued on the 20th March 2011 on grounds that;

- a. The proceedings to obtain the grant were defective in substance
- b. That one of the Administrators suffers from a progressive degenerative mental illness

c. That the distribution of the estate is inequitable and disproportionate to the detriment of some of the beneficiaries.

5. Cecilia Gathoni Kariuki died on the **8/7/2013** she was replaced by her son **Peter Nganga Kariuki**. **Harriet** died on the **6/8/2014**, she was replaced by **Regina Njambi Kariuki**. On the 9/11/2017 **Rosalia Waringa Njenga** a daughter in law of the deceased filed an affidavit and on the on the **8/6/2018**. **Mary Wangari Karuikia** daughter in law of the deceased filed a statement.

6. The subject of this Ruling are the Applications dated the **3/10/2012** and **12/10/2012**. 4 witnesses testified during the hearing of the Objection proceedings. PW1 was Lucy Wairimu Ndicu (Lucy), PW2 was Regina Njambi (Regina), PW3 was Rosalia Waringa Njenga (Rosalia) and PW4 was Doctor Josephine Omondi. In summary this is the evidence of the 2 objectors. Lucy testified that the deceased is her father. John the 1st administrator was her brother. After he died they agreed that their sisters in law Mary and Harriet would continue with the process of obtaining the grant of letters of administration. Her father's only asset was the 15 acres in Ngong/Ngong/ 583. Before her father died her late brother John had bought 5 acres out of the 15 acres. What was left for distribution was 10 acres. That at the point of distributing the estate she was given a paper to sign. They did not sit down as family to discuss the distribution of the ten acres. That she got to know that she had been disinherited when her mother died. She seeks her share of the estate as a daughter of the deceased. Regina a granddaughter of the deceased testified that though her mother Harriet was an administrator she was not well mentally as she was suffering from dementia. She called Doctor Josephine Omondi who testified that she examined Harriet on the 16/3/2012 she diagnosed her with dementia. According to Regina the estate was not distributed equitably that Harriet her mother was only given 2 acres. Rosalia a daughter in law of the deceased testified that she is illiterate and is unable to read. That she was shown the consent form and asked to sign but she was not informed of its contents. That she is aware that when the deceased was alive he made it clear that upon his demise his estate including parcel no. Ngong/ Ngong/ 583 should be shared equally among the two wives. That after her father in law's demise the family agreed to the issuing of the letters of administration to Mary Sekunda who was to represent the family of Monica Wacheke and Harriet Wangui was to represent the family of Veronica Njambi Karuiki the 2 were to administer and distribute the estate equally amongst the 2 families. That after the application for letters of administration Harriet fell sick and began suffering from episodes of loss of memory. That upon confirmation the family discovered that the property was subdivided inequitably Mary being the trustee of Njoroge Mathu was given 7 acres while the rest of them got 2 acres each. Upon inquiring she was informed that John the first born bought 5 acres from the deceased, that had she been informed of the inequitable distribution she would not have signed the consent form. That she never saw any document evidencing the sale of the 5 acres nor her husband. She has lived in the said property since 1970 and has not heard of any such sale. She urged the court to distribute the parcel of land equally.

7. Mary Wangari Karuiki a daughter in law of the deceased testified that she was married to Francis Martin Karuiki a son of the deceased. That they agreed as a family that the letters of administration be issued to Mary Sekunda and Harriet Wangui. That was done and the grant of letters of administration intestate was confirmed. That at the time of confirmation of the grant it was agreed between the five widows that they were to inherit their late husbands' shares and hold the same in trust for their respective husband's estate. They were called by Mr. Kamere advocate and he explained to them the effects of signing the application for confirmation of grant. They had no problem signing the consent to the mode of distribution. It was done voluntary. None of them raised any objection. At that time she never heard that any of the widows was suffering from mental illness. That this allegation is an afterthought and an attempt to deny the beneficiaries their rightful share of the deceased's estate. That in a meeting on the 13th June 1971 there was an agreement between the sons that the 5 acres belonged to John Njoroge Karuiki. This was the same agreement at the time of signing the grant. She testified that Lucy Wairimu Ndicu is a daughter of the deceased she is married and has other pieces of land. That Rosalia is estopped from claiming that she did not know what she was signing as she was present when Mr. Kamere explained the effects of signing the consent. That the applications should be dismissed as the sub divisions are at an advance stage.

DETERMINATION

8. Parties filed written submissions which I have carefully read and considered. The issues for determination are; whether the grants dated 20/3/2011 and 26/11/2011 should be revoked, whether there was inequitable distribution and whether the Applicants Cecilia and Lucy are entitled to inherit from the deceased's estate. There is no dispute that at the time the deceased died his only asset was parcel no. Ngong/Ngong/583 which is 15 acres. There is also no dispute that the parties agreed that after the death of the sons of the deceased, his daughters in law would take over the process of obtaining the letters of administration. The issues that have come up after the Certificate of Confirmation of Grant was issued are; that Mary Sekunda got a larger share of the estate, 7 acre whilst the other households only got 2 acres each and that the Administrators did not involve or include the daughters of the deceased at the point of distribution of the estate. That Harriet one administrator was of unsound mind at the time of confirmation of the grant.

9. The deceased died in 1966. Section of the Law of Succession Act Cap 160 provides at Section 2 sub section 2 that, "*The estates of persons dying before the commencement of this Act are subject to the written laws and customs applying at the date of death, but nevertheless the administration of their estates shall commence or proceed so far as possible in accordance with the Act*". My understanding of this section is that any person who died before the commencement of the Act his estate shall be governed by the customs applying at the date of his death.

In the Matter of the Estate of Mwaura Mutungi alias Mwaura Gichingo Mbura alias Mwaura Mbura (deceased) (NBR HC Succession Cause No. 935 of 2003),

administrator. For the family to have a discussion and agree she was to an administrator she must have been of sound mind. The proceedings of obtaining the grant was not defective as claimed by the 1st Objector Regina.

11. According to Lucy the 2nd Objector, the main issue is that they were not consulted at the time of distribution of the deceased's estate and that as the deceased's daughters they have been disinherited. She admits that they signed the consent papers but claims that they were not offered an explanation, and that they were not invited at the time of distribution of the land. Mary's evidence was that the widows of the deceased's sons had a meeting and they discussed the mode of distribution and agreed on how the estate was to be distributed, as earlier on agreed between their husbands. There is no dispute that Lucy and Cecilia were married at the time the grant was being confirmed. According to Mary, Lucy has sufficient land where she is married. Are the objectors entitled to a share of the deceased's estate? According to the Respondent under Kikuyu Customary law a married woman was not entitled to inherit the property of their father. The Applicants term this custom as archaic and discriminatory and relied on the case of **Rono vs. Rono & another (2008) 1KLR 803**. The deceased died in 1966 the law that was applicable at the time of distributing his estate is Kikuyu customary law. In **Re Kamuki Mweithi [2002] eKLR** Justice Rawal (as she then) held as follows; " ... *To find out what the Kikuyu customary law is in respect to the facts of this case, one has to fall back on Cotran's Book of Commentaries on customary law. The Law as to the right of inheritance by daughters is quite clear and is stated as under. "Daughters do not normally share the inheritance. They live with their mother until they are married."*

12. The deceased died in 1966, the distribution of his estate is guided by Kikuyu customary law as per Section 2 (2). Married daughters under Kikuyu customary law would not normally share the inheritance. This was the custom then. One would call it discriminatory but it was the custom then. Even if I were to consider equity in this matter, the Applicants came to court in 2012. This was about 46 years after the death of their father and about 5 years from 1971 when their brothers discussed distribution the land and settled on the land. In my view they sat on their rights. The persons in the said parcels of land have settled in them. To hold that they should get a portion now would be disrupting the lives of the persons who have settled in the said parcel of land. The applicants were married and it is not in dispute that they have land in the places they are married. To disrupt the status of the persons on the land now in my view at this time would not be in order as the persons on the land have moved on.

13. This brings me to the next issue on what is available for distribution from the 15 acres. It is the evidence of the Respondent that out of the said 15 acres, 5 acres was bought by John and that he paid his father for it. This has been supported by Lucy but challenged by Rosalia and Regina. Rosalia's evidence was that she was not aware of the said agreement between the John and the deceased and that she was not aware of any meeting between the sons of the deceased. To support her evidence Mary produced documentary evidence of a meeting held in 1971 over the said 5 acres. It was her evidence that the deceased's sons had the meeting and agreed that the 5 acres belonged to the John. I note that there was no objection to the said documents in my view there show that the 5 acres were not available for distribution. The 10 acres left were distributed between the widows of the deceased's son. The respondent has shown that there was consent from the widows of the deceased. Rosalia's evidence that she did not know what she was signing and that she was illiterate and that there was no explanation given on the mode of distribution is not persuasive. The consents were voluntarily obtained and was properly applied when the grant came up for confirmation and the certificate of confirmation of Grant was issue. This was equitable distribution as agreed by the parties as they followed the agreement of their deceased husbands as regards the inheritance they got from their deceased father.

All in all I find no merit the applications dated the 3/10/2010 and 12/10/2010 and I dismiss them. Since this is a family matter each party to bear its own costs.

Dated signed and delivered at Nairobi this 23rd day of **May 2019**

R.E.OUGO

JUDGE

In the presence of;

1stObjector Absent

Mr. Kamau h/b for Mr. Ratemo For the 2ndObjector

Respondent Absent

Ms Mercy Court clerk