



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KIAMBU

SUCCESSION CAUSE NO. 114 OF 2016

IN THE MATTER OF THE ESTATE OF FRANCIS NJOGA KURIA (DECEASED)

RULING

1. This cause has a long and checkered history as the multiple filings on record indicate. The dispute has been in court for about 25 years now. The deceased herein, **Francis Njoga Kuria** died on 3rd September 1993.

2. In the affidavit in support of the Petition sworn by **Nungari Njoga** the Protessor herein, and contained in the Petition, the deceased died possessed of one parcel of land namely **Chania/Mataara/302** and was survived by:

- a) Nungari Njoga - widow Protessor
- b) James Kuria Njoga - adult son
- c) Stephen Kinyanjui Njoga - adult son
- d) David Njoga - adult son
- e) Chrispus Kuria Njoga - adult son
- f) Njeri Njoga - adult daughter

3. In subsequent proceedings however, other beneficiaries and assets emerged. The initial grant issued to the Protessor was revoked by **Koome J** (as she then was) by her ruling delivered on 26th November 2006, allowing the revocation application filed by **Crispus Kuria Njoga**. A new grant issued in the joint names of **Crispus Kuria Njoga** and the Protessor, and pursuant to the directions of the court **Crispus Kuria Njoga** filed an application to confirm the grant.

4. The application, filed on 9th January 2013 named seven beneficiaries namely, **Crispus Kuria Njoga; John Mwangi Njoga; Nduta "A" Njoga; Nduta "B" Njoga; Wangechi Njoga; Esther Nyambura; Gakenia Njoga** and **David Njoro**.

5. Included were the following assets:

- i) **Chania/Mataara/302**
- ii) **Chania/Mataara/T22**
- iii) **Chania/Mataara/T23**
- iv) **Chania/Mataara/T24**
- v) **Chania/Mataara/T25**

6. The application filed on 9th January 2013 was withdrawn on 28.11.16. The affidavit of the Protessor sworn in respect of the said summons

is similar in substance, to the one filed in response to the summons filed on 9th August 2016. The latter summons to confirm grant, also filed by **Crispus Kuria Njoga**, names only two beneficiaries, namely, **Crispus Kuria Njoga** and the Protestor, but includes the same assets as those in the withdrawn application.

7. For her part, the Protestor lists 19 beneficiaries and three assets namely land parcels **Nos. Chania/Mataara/302, Chania/Mataara/T24** and **Chania/Mataara/T25** and disputes that **Chania/Mataara/T22** and **T23** were part of the estate of the deceased. She asserts that land parcel **No. Chania/Mataara/T25** is the shared homestead of the deceased's two widows.

8. The Protestor proposed that the estate of the deceased be distributed as follows:-

PROPERTY		SHARE OF HEIRS
A. Title Number	David Njoroge	1 acre
	James Kuria	1 acre
	Stephen Kinyanjui	1 acre
	Nungari Njoga & John Mwangi	1.45 acres
B. Title Number	Nancy Nduta	Equally amongst the
Chania Mataara/T.24	Gakenia Njoga	unmarried daughters.
	Wangechi Njoga	
	Catherine Wanjiku	
C. Title Number	Equally between	
Chania Mataara/T.25	the 2 houses	

9. She urged the court to disregard the mode of Distribution proposed by the Objector/Applicant.

10. The court directed that the Application be heard by way of viva voce evidence. However, parties merely made submissions at the hearing. The Applicant appeared in person. He relied on his affidavit and added that there is a lot of hostility in the family and the help of the administration is needed. He prayed that the Court confirms the grant as per his proposal.

11. Mr. Kamwendwa, counsel for the Protestor, submitted that she is opposed to the Applicant's mode of distribution. He stated that the deceased was polygamous and had other beneficiaries not mentioned by the Applicant. That the Applicant's proposal does not provide for the daughters of the deceased. He reiterated that the estate of the deceased was comprised of Chania/Mataara/T24 and T25 and Chania/Mataara/302. Chania Mataara T.22 and T.23 were said to be owned by the Protestor and therefore, not part of the deceased's estate. Counsel submitted that they have proposed a mode of distribution that involves all the beneficiaries.

12. The court has considered the entire record herein, rival affidavits and submissions. There is no dispute that the deceased herein had two wives during his lifetime, namely **Jerusa Wamucii Njoga** (Crispus' mother), and the Protestor. Jerusa is deceased.

13. From the record, the ruling of **Koome J** (as she then was), and the affidavits of the parties, it is apparent that **Jerusa Wamucii Njoga** had two sons namely **Crispus Kuria Njoga** and **David Njoroge Njoga** (now deceased). She had three daughters, including **Nduta Njoga** (Nduta A) whom **Koome J** stated to be unmarried and dependant on the estate. It appears that only Crispus Kuria Njoga and a sister **Esther Nyambura** are alive presently as David Njoroge Njoga died during the pendency of this suit. The Protestor had several children including 3 sons and 10 daughters who include (Nancy) Nduta Njoga (Nduta B- another dependent), (Martha) Njeri Njoga and Wangechi Njoga.

14. Before **Koome J**, the Protestor had admitted during her evidence that her sons **Stephen Kinyanjui** and **James Kuria** were deceased, while **John Mwangi** died in infancy. Further that, Stephen Kinyanjui's wife had left him and remarried elsewhere. In total, the Protestor's children stated in her affidavit of protest are 13 and not 14 as purported in her affidavit. According her affidavit four of them including all the sons and **Martha Njeri** are deceased.

15. In her ruling, **Koome J** observed that the family of Crispus Kuria Njoga had been prejudiced by the initial distribution, as the Applicant, his brother and sister had not been considered in the distribution "**while other brothers (in the house of the Protestor) got 1 acre and more even if some of them were dead with no survivors.**" The learned Judge also noted the Protestor's claim at the hearing to the effect that the "**share earmarked to (Stephen) Kinyanjui is her own share**". It seemed from the ruling that certain beneficiaries had renounced their inheritance but the direction that they file a form D 37 does not appear to have been complied with.

16. Thus, it was extremely difficult for the court, to confirm the actual beneficiaries, beneficiaries who are deceased and/or their heirs and

whether they are have any interest in the estate. Doing my best, I would find that despite the fact that Jerusa Wamucii Njoga had five children as stated in the Protestors' affidavit, only 4 are to be reckoned for purposes of distribution. These are:

- a) Crispus Kuria Njoga
- b) David Njoroge (deceased)
- c) Nduta Njoga 'A' (deceased)
- d) Esther Nyambura

17. Further that while the Protestor allegedly had 13 children with the deceased, for the purposes of distribution, only the following beneficiaries are to be reckoned;

- a) Nungari Njoga - (widow)
- b) (Nancy) Nduta 'B' - unmarried daughter
- c) Wangechi Njoga - unmarried daughter
- d) (Martha) Njeri Njoga - deceased daughter

18. In arriving at this list of beneficiaries, I have relied on findings by Koome J in her ruling, the affidavit filed in support of the Petition by the Protestor, the Applicant's affidavits and other related material on record.

19. As regards the extent of the estate, it seems, from the green card extracts annexed to the Protestor's affidavit as "NNI" that the land parcels **No. Chania/Mataara/T22 and T 23** were registered in the name of the widow in 1971. It is not clear to me why the Protestor could not avail a copy of search certificate to confirm her claims. The Applicant has asserted by his affidavit supporting the instant application that these parcels are included in the estate of the deceased. However, earlier on, by his supplementary affidavit filed on 3.6.14 in response to the Protestors affidavit to the earlier summons for confirmation, he had asserted that:

"... Regarding plot Nos. Chania/Mataara/T22 and T.23 I have not laid any claim on them."

20. The level approbation and reprobation by the disputants that characterized this case made it difficult to establish even the most basic facts of the matter. As I noted earlier, in her affidavit supporting the Petition, the Protestor had only included one estate asset, namely **Chania/Mataara/302**. In subsequent filings and more particularly after the ruling of Koome J, the Protestor included in her affidavit land parcels **Nos. Chania/Mataara/T24 and Chania Mataara/T25** the latter being the alleged shared homestead. Thus, I find that the assets of the estate are:

- a) **Chania/Mataara/302**
- b) **Chania/Mataara/T24**
- c) **Chania /Mataara/T25**

21. Section 40 of the Law of Succession Act provides that:

"(1) Where an intestate has married more than once under any system of law permitting polygamy, his personal and household effects and the residue of the net intestate estate shall, in the first instance, be divided among the houses according to the number of children in each house, but also adding any wife surviving him as an additional unit to the number of children".

22. As there are equal numbers of beneficiaries (4) to be reckoned in respect of each house, I do order that the three assets be shared as follows between the 1st house (the Applicant's) and the 2nd house (the Protestor's):

- a) **Chania/Mataara/302** - Half to the 1st house and half to the 2nd house
- b) **Chania/Mataara/ T24** – Half to the 1st house and the other half to the 2nd house.
- c) **Chania/Mataara/T25** - Each house to take the half of the parcel on which their family homestead is established and in any event priority be given to the widow to keep the area upon which her current house is situated.

23. The share assigned above to each respective house is to be distributed equally, among the 4 identified beneficiaries in each house who

were reckoned for purposes of distribution in this judgment. For the avoidance of doubt, if any of such beneficiaries be deceased, their individual share will devolve upon their respective estates. Parties will bear own costs.

DELIVERED AND SIGNED AT KIAMBU THIS 28th DAY OF NOVEMBER 2019

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C. MEOLI

JUDGE

In the presence of:

Applicant – Present in person

Protestor – Present in person

Court Assistant – Kevin