



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KIAMBU

SUCCESSION CAUSE NUMBER 17 OF 2017

IN THE MATTER OF THE ESTATE OF NJOROGE CHEGE (DECEASED)

JORAM MBACIO CHEGE.....1ST APPLICANT

DAVID NJOROGE MURIU.....2ND APPLICANT

VERSUS

GEORGE NJOROGE CHEGE.....RESPONDENT

RULING

1. The Application before the Court is one for review of the further Amended Confirmation of Grant of Letters of Administration issued to the Respondent to include the families of Chege Njoroge “B” and Muriu Njoroge as beneficiaries to the estate particularly with respect to land parcel No. LR No. Gatamaiyu/Gachoiri/592 (“Suit Property”).
2. The proceedings relate to the estate of Njoroge Chege (Deceased). The Deceased had nine sons. They are the beneficiaries to the estate of the Deceased. The protagonists in the current Application are grandchildren of the Deceased.
3. The story begins in 1973. Mbugua Chege is one of the nine sons to the Deceased. He was registered as the owner of the Suit Property. In 1974, his eight brothers moved to Court seeking for orders that half of the Suit Property was registered in the name of Mbugua Njoroge in trust for his eight brothers. Justice Effie Owuor granted them the orders in Nairobi Civil Case No. 1731 of 1974. The Court of Appeal affirmed that decision in Civil Appeal No. 191 of 1994.
4. So, it came to be that when the Deceased passed on, all the nine sons would share equally in the Suit Property – by dint of this Court decision.
5. However, when the Succession Cause was filed as Nairobi Succession Cause No. 1715 of 1992, one of the nine sons to wit Chege Njoroge “A” claimed that he was entitled to a larger portion of the Suit Property because he had purchased some two acres of land from his brothers Chege Njoroge “B” and Muriu Njoroge (the Applicants’ fathers). Hence, while all the beneficiaries agreed that all the nine sons were entitled to share the Suit Property, Chege Njoroge “A” insisted that he should get one acre each from the portions for Chege Njoroge “B” and Muriu Njoroge.
6. The parties were unable to agree and the matter went for *viva voce* hearing before Githinji J. (as he then was). At the conclusion of the hearing, the Learned Judge, on 02/10/1998, pronounced himself thus:

From the foregoing, I am not satisfied that there was an enforceable agreement of sale which Chege Njoroge can rely on. I dismiss the claim by Chege Njoroge with costs and order that Ibrahim Muriu Njoroge and Chege Njoroge “B” or his Personal Representative are each entitled to share the estate equally with the other beneficiaries and I so order. An application for confirmation of Grant to be filed.
7. This determination by the Learned Judge was never appealed, reviewed or set aside. It is as clear as day that the estate of the Deceased was to be shared equally among the nine sons of the Deceased. In particular, it was clear that both Ibrahim Muriu Njoroge and Chege Njoroge “B” were entitled to equal shares of the Suit Property as the other seven sons of the Deceased.
8. Somehow, after a series of Applications for Confirmation of Grant of the Letters of Administration, the Administrators ended up before the Court on 18/07/2011 and were granted a Further Amended Certificate of Confirmation of Grant. It is unclear from the Court records who filed for this Certificate. But three things are clear: First, that the Applicants herein or the families of Ibrahim Muriu Njoroge and Chege Njoroge “B” were not served with the relevant Application for rectification of Grant and neither did they consent to it. Second, that the Applicants and/or the families of Ibrahim Muriu Njoroge and Chege Njoroge “B” were not present when the orders were given. There has

been no claim that they were duly served. Third, that the mode of distribution included in the Further Amended Certificate of Confirmation of Grant directly contradicts the ruling by Githinji J. (as he then was) of 02/10/1998 dismissing Chege Njoroge "A"'s claim for a larger portion of the Suit Property at the expense of Ibrahim Muriu Njoroge and Chege Njoroge "B".

9. Despite this, the Respondent now wishes to have that Further Amended Certificate of Confirmation of Grant to be given the Court's blessings and that distribution of the estate should be done in accordance with it.

10. For obvious reasons, that would be an inequitable, unfair and unlawful disposition of the Succession Cause. If the Respondent was dissatisfied with the decision by Githinji J. (as he then was) dismissing Chege Njoroge "A"'s claim to 2 acres from Ibrahim Muriu Njoroge and Chege Njoroge "B", he ought to have appealed against that decision. He did not. As things stand and as things stood by 18/07/2011, the High Court had ruled that Ibrahim Muriu Njoroge and Chege Njoroge "B" were entitled to equal shares in the Suit Property. That is not what the Further Amended Certificate of Confirmation of Grant dated 18/07/2011 says. While I am unable to decipher exactly what the notation "*Equal shares to hold in trust on behalf of Chege Njoroge "A" family plus share paid to Ibrahim Muriu Njoroge and Chege Njoroge "B"*" means, it is clear that the Further Amended Certificate of Confirmation of Grant does not bequeath equal shares to Ibrahim Muriu Njoroge and Chege Njoroge "B" as to all the other seven sons of the Deceased.

11. Without further analysis, it seems readily obvious that this is an error on the face of the record that is remediable through an order for review. At the very least, this is an error which provides sufficient reason to review the orders of 18/07/2011. This would be the nature of reasons that is in the same class as those specifically mentioned in Order 45, Rule 1. I say so because had it been brought to the attention of the Learned Judge who signed the order of 18/07/2011 that the ruling of the Court of 02/10/1998 had directed that all the beneficiaries share equally the Suit Property and that the mode of distribution exhibited in the Further Amended Certificate of Grant was not in line with the Court ruling, I am certain the Learned Judge would not have signed the order. It is therefore fair to say that the order was obtained by stealth or at least by not bringing to the attention of the Court the existence of the Court ruling dated 02/10/1998.

12. The Respondent has responded to the Application for review, in my view, by re-litigating the issue determined by Githinji J. (as he then was) and arguing that his father had paid for the two acres. That train left the station. It is now not open for the Respondent to re-argue the case after the definitive decision by the Court on 02/10/1998.

13. In the circumstances, I am persuaded that this is a fit case to review the orders of the Court given on 18/07/2011. I hereby do so. The Further Amended Certificate of Confirmation of Grant shall now be rectified to indicate that all the nine sons of the Deceased or their Personal Representatives are entitled to equal shares in the Suit Property to wit Land Parcel No. LR Gatamaiyu/Gachoiri/592. Consequently, a Further Further Amended Certificate of Confirmation of Grant of Letters of Administration in the Estate of the Deceased reflecting this decision to issue.

14. This being a family matter, each party will be its own costs.

15. Orders accordingly.

Delivered at Kiambu this 15th Day of March, 2018.

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JOEL NGUGI

JUDGE