



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MURANG'A

SUCCESSION CAUSE NO 853 OF 2013

FORMERLY NYERI HC SUCCESSION CAUSE NO 303 OF 1998

IN THE MATTER OF THE ESTATE OF PATRICK KABIRU NJUGUNA - DECEASED

MARGARET WANJA NJOROGE.....2nd ADMIN/APPLICANT

VERSUS

FRANCIS KARIUKI KAMAU.....1ST ADMIN/PROTESTOR

J U D G M E N T

1. On 10/05/1999 a grant of letters of administration intestate was made herein jointly to **Francis Kariuki Kamau** and **Margaret Wanja Njoroge**. They are respectively the father and widow of the Deceased herein, **Patrick Kabiru Njuguna**. The Deceased was survived also by two sons, Alex Njuguna Kabiru and Benjamin Njoroge Kabiru who were minors at the time of the Deceased's death on 08/09/1998. They appear to have both attained majority now.

2. By an **amended summons dated 14/01/2002** the 2nd Administrator (**Margaret Wanja Njoroge**) sought confirmation of the grant (issued on the same day it was made – 10/05/1999). In her proposed distribution appearing at paragraph 9 of her supporting affidavit she made provision of the 1st Administrator (**Francis Kariuki Kamau**) to get 25% of the proceeds in one of the Deceased's bank accounts. The rest, along with other properties and assets of the estate, were to go to the 2nd Administrator and her two sons with the Deceased. Those other properties included some five (5) parcels of land.

3. On 24/11/2004 the 1st Administrator filed an affidavit of protest. He counter-proposed that he should get the following from the Deceased's estate –

- (a) 3 acres from land parcel L.R. Muthithi/Chumbiri/75
- (b) The whole of land parcel L.R. Loc Mwerua/Kiandu/537
- (c) All amounts awarded upon the claims pertaining to the accident (apparently that killed the Deceased)
- (d) 25% of the proceeds in the Deceased's bank accounts.
- (e) Half of the Deceased's Kenya Airways shares.

4. There is no explanation in the affidavit of protest why the 1st Administrator should share in his late son's estate when he was survived by a spouse and children. He is obviously not entitled as a matter of law or right to such share in these circumstances. However, in an affidavit he swore and filed on 31/01/2007 in reply to an application by the 2nd Administrator to revoke the joint grant so that a grant can be made only to herself, the 1st Administrator stated that his claim in the Deceased's estate is based on the fact that the Deceased was more like a business partner to him.

5. On 06/10/2015 when the application for confirmation of grant came up for directions the court was informed by the 1st Administrator's learned counsel that he laid claim only to one parcel of land owned by the Deceased upon the basis that he bought the land jointly with the Deceased. The immediate response of the learned counsel for the 2nd Administrator was that the sale agreements in respect of all the Deceased's parcels of land were in the name of the Deceased, and that his father did not participate in the purchases at all.

6. Both learned counsels were in agreement that the affidavit of protest did not raise any issue of fact that required trial by oral evidence. The

court therefore directed that the parties do file and exchange written submissions. Eventually both parties filed and exchanged their submissions, which I have read and considered.

7. The 1st Administrator's claim in his son's (the Deceased's) estate is based upon an alleged business partnership between them in respect to one parcel of land. He did not quite explain why he wanted shares in the other assets of the Deceased as set out in his affidavit of protest.

8. A succession court has a very limited mandate – ***to determine the persons beneficially entitled to a deceased person's estate and their respective shares therein***. Ordinarily a parent will not be entitled to a share of his or her child's estate where such child is survived by a spouse and children, as the Deceased herein was. The 1st Administrator has not claimed that he was a dependant of the Deceased, or that he was being maintained by him in any way. The parcel of land in which he lays a claim is in the Deceased's sole name. His (1st Administrator's) claim in it, based on an alleged business partnership or trusts, cannot be properly litigated in a succession cause. Such claim belongs in appropriate proceedings in a civil court.

9. In the circumstances I find no merit in the 1st Administrator's claim to be a beneficially entitled in the Deceased's estate. His claim as it appears in his affidavit of protest is hereby dismissed.

10. I will in the event allow the amended summons for confirmation of grant and confirm the grant as sought. Distribution shall be as proposed at paragraph 9 of the supporting affidavit. It is so ordered.

11. Parties shall bear their own costs of these proceedings.

DATED AND SIGNED AT MURANG'A THIS 19TH DAY OF APRIL 2018

H P G WAWERU

JUDGE

DELIVERED AT MURANG'A THIS 20TH DAY OF APRIL 2018