



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MURANG'A

SUCCESSION CAUSE NO. 609 OF 2013

[FORMERLY NYERI HIGH COURT SUCCESSION CAUSE NO. 292 OF 2008]

RE ESTATE OF JOHN NJOROGE NGERURO ALIAS NJOROGE NGERURO (DECEASED)

BENSON NDIKIKA NJOROGE.....ADMINISTRATOR

VERSUS

1. STEPHEN MWANGI CHEGE

2. SAMUEL GACHIE NGERURO

3. SULEIMAN NGERURO NJOROGE

4. JOHN MUNENE

5. ELIZABETH NYAMBURA NJOROGE.....PROTESTORS

AND

1. IRENE KARWETI KAMAU

2. ESTHER NJERI KANGIRI

3. FRASHIAH NDUTA WAMONI.....APPLICANTS

RULING

1. By a *considered judgment* delivered on 20th May 2016, the High Court (Waweru J), *confirmed* the grant of letters of administration *intestate*. The three *applicants* are aggrieved. They lodged summons dated 17th June 2016 to *annul* the grant.

2. The gravamen of their complaint is that they are *daughters* of the deceased; and, that the fact was concealed from the court. They aver that the proposed distribution *disinherits* them completely. Those matters are set out at length in their joint affidavit sworn on 17th June 2016.

3. The summons is opposed through a replying affidavit of the *administrator* sworn on 15th February 2017. The summons is also contested by John Munene and Elizabeth Nyambura (the 4th and 5th *protestors*). A replying affidavit was sworn by Elizabeth Nyambura on 26th July 2016.

4. On 6th March 2017 and 18th September 2017, the disputants *agreed* that the summons raises a pure *point of law*; and, that the matter be determined by *written submissions*. The applicants and the administrator lodged their submissions on 14th May 2018. The 4th and 5th *protestors* filed submissions on 11th June 2018.

5. The 1st to 3rd *protestors* did *not* file a reply or submissions. From the nature of the present summons, their rights are *not* prejudiced.

6. I have considered the depositions and rival submissions. The key issue for determination is whether the three *married daughters* of the deceased are entitled to a share of the estate. Paraphrased, should the estate of the deceased be distributed under the Law of Succession Act or *Kikuyu* customary law?

7. It is *not* disputed that the deceased was a *Kikuyu* who died intestate on *1st July 1969*. That was long before the Act came into force. It is also common ground that the deceased was married to *four wives*. He owned the properties particularized in the judgment I referred to. Some of those properties were distributed *inter vivos*; others were the subject of the protested summons for confirmation of grant.

8. The Law of Succession Act only came into force on *1st July 1981*. Section 2 (1) of the Act expressly provides that it shall apply to the estates of persons dying *after* commencement of the Act. I thus readily find that the Act could *not* apply *retrospectively* to the estate of the deceased.

9. Section 2 (2) further provides that estates of persons who died before commencement of the Act are subject to the written laws and *customs* applying at the date of death. It is common ground that the deceased was married to *four wives* under *Kikuyu* customs. I thus find that the estate of the estate was governed by *Kikuyu* customary law.

10. The only question would be whether the custom was *in conformity* with section 3 of the Judicature Act. No evidence was led by any of the disputants to suggest that *Kikuyu* customary law on intestate succession is repugnant to morality or justice. I am also guided by a long line of precedents including *Kimani v Gikanqa* [1965] EA 375, *Apeli v Buluku* [1985] KLR 777, *Joash Ochieng Ougo & another v Wambui Otieno* [1987] KLR 364, *Wambugi Gatimu v Stephen Kimani* [1992] 2 KAR 292, *MWG v EWK*, Court of Appeal, Eldoret, Civil Appeal 20 of 2009 [2010] eKLR.

11. It is true that the three applicants were *not* provided for. They are all *married*. From the letter of the area chief dated 15th June 2016, they are now aged 81, 71 and 67 years respectively. *Kikuyu* customary law did *not* contemplate *married* daughters as heirs to the estate of the deceased. Their *consent* to the grant of letters of administration would thus be redundant.

12. I am also alive that section 82 of the *repealed* Constitution (which was operative when the cause was first filed at the High Court in Nairobi on 26 May 2006) permitted *discrimination* in matters of personal law and inheritance.

13. I have noted that the *unmarried* daughters of the deceased (the 4th and 5th protestors) were provided for in the impugned judgment. I concur fully with that position.

14. The upshot is that there is no merit in the summons for *annulment* of the grant dated 17th June 2016. It is *dismissed* with *no* order on costs.

It is so ordered.

DATED, SIGNED and DELIVERED at MURANG'A this 31st day of July 2018.

KANYI KIMONDO

JUDGE

Ruling read in open court in the presence of:

Mr. Kirubi for the administrator instructed by Kirubi, Mwangi Ben & Company Advocates.

No appearance by counsel for the applicants.

No appearance by counsel for the 1st to 5th protestors.

Mr. Kiberenge and Ms. Dorcas, Court Clerks.