



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**SUCCESSION CAUSE NO. 403 OF 2010**

**IN THE MATTER OF THE ESTATE OF AGNES WANJIKU NJOROGI (DECEASED)**

**RULING**

1. The application for determination is the summons for confirmation of grant dated 11<sup>th</sup> July 2017. The applicants seek confirmation of the grant made to them on 14<sup>th</sup> March 2017. In their application, the administrators have identified the survivors of the deceased. The survivors identified are Alexander Ngugi, John Nguri, Daniel Njoroge, Reuben Mwaura, Reuben Waweru, Reuben Waiharo, Reuben Kamau, Mary Wangare Njau, Jane Ngonyo Ng'ang'a and Lucy Nyambura Mburu. Two of the children are shown to be deceased, Daniel Njoroge and Jane Ngonyo Ng'ang'a. The administrators have not listed the assets of the estate available for distribution, but those in the distribution schedule are Kibera – 59 rooms, Kitengela/Kajiado/7454, Longonot/Kijabe Block 2/7239, money at an account with Kenya Commercial bank (140201265), ICDC Investment Company Limited shares, Kamukunji Sukumawiki shares. It is proposed that all these assets be shared equally amongst all the nine (9) individuals identified as survivors of the deceased. The proposed distribution is consented to by only two of the children, being Mary Wangare Njau and Lucy Nyambura Mburu.
2. The application was served, and has elicited replies from some of the survivors of the deceased.
3. There is an affidavit sworn by Alexander Ngugi, on 24<sup>th</sup> July 2017. He principally avers that some of the assets of the estate have since been distributed and was no longer available. These include the 59 rooms shared out at Kibera and the money at Kenya Commercial Bank. He says the rooms were a long time ago amongst all the beneficiaries, and some have since been sold to third parties. The money was also allegedly withdrawn and each beneficiary allegedly got their share. He also avers that the deceased had distributed her property before she died and he has attached documents to his affidavit to support the contention. She allegedly gave Longonot/Kijabe Block 2/7239 to John Nguri, Reuben Waweru and Daniel Njoroge, Longonot/Kijabe Block 2/7167 to Reuben Kamau and Reuben Waiharo, and Kitengela/Kajiado/7454 to Reuben Mwaura and Alexander Ngugi. He further avers that Kitengela/Kajiado/7454 was not even estate property for it did not belong to the deceased. He claims to have had bought with another person and then it was registered in the name of the deceased. They later sold the same to third parties.
4. The documents attached to the affidavit include a document dated 13<sup>th</sup> March 1999, when the deceased allegedly distributed Longonot/Kijabe Block 2/7167, Longonot/Kijabe Block 2/7239 and Kitengela/Kajiado/7454 in the manner described in the foregoing paragraph. He has also attached documents dated 2<sup>nd</sup> September 1984, 24<sup>th</sup> December 1984, 28<sup>th</sup> April 1985, 12<sup>th</sup> January 1986 and 26<sup>th</sup> August 1988, to demonstrate that he bought some land in the Kajiado area from an ole Mpaka Kitiba Parsalai. Copy of title deed for Kitengela/Kajiado/7454 dated 23<sup>rd</sup> November 2010 is attached as evidence that it is not in the deceased's name but that of John Samuel Kariuki, Linus Kimathi and Grace Nyambura Ndichu.
5. The other reply is by Reuben Waweru Gikaru, sworn on 22<sup>nd</sup> August 2017. He avers that the previous administrators had not disclosed some assets that make up the estate, such as Longonot/Kijabe Block 2/7167. He states that it was a lie to claim that Kitengela/Kajiado/7454 was a property bought by Alexander Ngugi as it was always estate property, and that the previous administrators meddled with the estate when they sold it to John Samuel Kariuki, Linus Kimathi and Grace Nyambura Ndichu. He supports the distribution proposed in the application dated 11<sup>th</sup> July 2017.
6. I directed that the application be disposed of by way of written submissions. The parties have complied.
7. What emerges is that there is no certainty as to what is available for distribution. The current administrators are proceeding on the basis that all the assets listed are available and distributable. I note that there are no annexures to their affidavit in support of the confirmation application. There is no telling therefore whether the landed assets are still in the names of the deceased or have probably changed to the names of other persons. There is also no document from the bank on the money allegedly held there, nor of the various shares in the corporate firms. The court would be proceeding blindly if it were to make orders on distribution with uncertainty as to whether the assets in question exist.
8. The previous administrators appear, in my understanding of their averments, to be saying that there was *inter vivos* distribution by the deceased or distribution by will. They have attached some documents to support that contention. They have, however, not exhibited documents to show that after the alleged *inter vivos* distribution, the deceased proceeded to transfer the subject property to the beneficiaries.

Regarding the will, I do note that it is at this stage that the issue of a will is being raised, yet in the two causes initiated to the estate of the deceased the petitioners sought letters of administration in intestacy and no allegation was made that the deceased had made a will. I am told that the 59 rooms at Kibera were shared out a long time ago. However, I am not being told when exactly this happened and who made the sharing out and who the beneficiaries were. The same applies to the money at the bank. It has not been indicated when the same was withdrawn and shared out, and how the sharing out was done. The former administrators make no mention at all of what happened to the shares in the various firms.

9. Before the court can go on to distribute the assets, it will be important to have the assets properly ascertained.

10. The orders that I shall make for now are as follows -.

- (a) That the application for confirmation of grant dated 11<sup>th</sup> July 2017 is hereby postponed;
- (b) That the applicants shall file further affidavits attaching copies of search certificates in respect of the landed assets as the evidence of the current status as to ownership of the said assets ;
- (c) That the applicants shall also attach documents on the current status of the funds at the bank and the shares in the various firms;
- (d) That the former administrators, whose grant was revoked on 20<sup>th</sup> January 2016, that is to say Alexander Ngugi R. Gikaru and John Nguri Gikaru, shall file further affidavits to explain when and to whom and by whom the assets of the estate were distributed a long time ago;
- (e) That Alexander Ngugi R. Gikaru to also explain the circumstances under which Kitengela/Kajiado/7454, which he alleges he personally bought with his own money, got to be registered in the name of the deceased, and also the circumstances under which the same was sold and transferred to John Samuel Kariuki, Linus Kimathi and Grace Nyambura Ndichu in 2010; and
- (f) That the summons for confirmation of grant shall be disposed of after the clarifications in (c), (d) and (e) above have been rendered.

11. It is so ordered.

**DATED, SIGNED and DELIVERED at NAIROBI this 27<sup>TH</sup> DAY OF JULY, 2018.**

**W. MUSYOKA**

**JUDGE**