



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO. 1207 OF 2004

IN THE MATTER OF THE ESTATE OF KANUTHU RUGU alias HANNAH WANJIRU RUGU (DECEASED)

JUDGMENT

1. The first and 2nd Administrators of the Estate of KANUTHU RUGU alias HANNAH WANJIRU RUGU (Deceased) who died on 26/9/1996 filed a summons for confirmation dated 19.9.2012 seeking the following orders.

(i) THAT the grant of Letters of Administration made to Elizabeth Wangui Francis, Teresia Nyambura Gacheru and Fredrick Murigi Muiruri on 19/7.2011 be confirmed.

2. The 3rd Administrator, FREDRICK MURIGI MUIRURI filed an Affidavit of Protest dated 21st May 2013 in which he stated as follows;

(i) THAT he is a co-administrator of the Estate of Kanuthu Karugu alias HANNAH WANJIRU KANUTHU (Deceased) together with the 1st and 2nd Administrators.

(ii) THAT the Assets which the 1st and 2nd Administrators are seeking to distribute belong to his grandfather Rugu Njiraini (Deceased).

(iii) THAT the original Parcel of Land from which land parcel Loc 17/Kamahuha/1259 resulted from was Parcel No. Loc. 17/Kamahuha/659 which was registered in the names of Rugu Njiraini his grandfather.

(iv) That Rugu Njiraini (Deceased) his grandfather who died in 1978 had three wives ad Children as follows;

(a) Wamaitha Meri Rugu (1st Wife)

1. Muiruri Rugu (3rd Administrator's father)

2. Marion Wanjiru (married)

3. Keziah Muthoni (deceased)

4. Janet Wairimu (married)

(b) Naomi Mbeko Rugu (2nd Wife)

1. Muiruri Rugu (3rd Administrator's father)

(c) Kanuthu Rugu alias Hannah Wanjiru (3rd Wife)

1. Elizabeth Wanjiru Francis (married)

2. Teresa Nyambura Gacheru (married)

(v) That Rugu Njiraini (Deceased) having died in 1978 before the law of Succession Act came into operation on 1.7.1981, the 1st and 2nd Administrators who are the daughters of Kanuthu Rugu are not entitled to inherit to share the resultant estate of Rugu Njiraini.

(vi) That in the premises, it is only the surviving male children of Muiruri Rugu Viz Boniface Karanja, Peter Waweru, Mungai

Muiruri, Fredrick Murigi (the 3rd administrator/Objector) Isaac Maina, Peter Mburu and James Ng'ang'a who are entitled to share the Estate comprised in Land Parcel No. Loc. 17/Kamahuha/1259 and Loc 17/Kamahuha/T.63.

(vii) That the two daughters of Kanuthu Rugu are married and live far away while the 3rd administrator and his brothers live on the said properties.

3. The Parties were directed to file written submissions in the objection. The 3rd administrator filed submissions dated 25/9/2018 in which he retaliated the averments in the Affidavits of protest and further as follows;

(i) THAT the law applicable in determining the sharing of the two parcels of land is Kikuyu Customary Law because the original owner Rugu Ndiraini (Deceased) died on 1978 before the Law of Succession Act came into force.

(ii) That Kanuthu Rugu who was registered jointly with the father of the 3rd Administrator only had a life interest in the said property and that the Registration did not confer to her absolute ownership of the suit properties.

(iii) The 3rd Administrator relied on the book by Eugene Cotran on Restatement of African Customary Law; 2 at page 7 where it is stated that under Kikuyu Customary Law only sons were entitled to inherit land and daughter were normally excluded but may receive a share if they remain unmarried.

4. The 1st and 2nd administrators opposed the objection. They filed written submissions in which they stated in summary as follows:

(i) That the 3rd Administrator/Protestor is a grandson of Rugu Njiraini and that his father Muiruri Rugu already inherited land from Rugu Njiraini

(ii) That there is no dispute that the 1st and 2nd Administrators are the children of Nuthu Rugu the 3rd wife of Rugu Njiraini the original owner of the properties.

(iii) That the father of the 3rd Objector Muiruri Rugu inherited a portion of the Property known as Loc-17/Kamahuha/695 which was registered in the name of Muiruri Rugu and Nuthu Rugu (the mother of the 1st and 2nd administrators and after subsequent subdivisions the remaining property which is the subject of this succession was renamed Loc 17/Kamahuha/1259.

(iv) The 1st and 2nd Administrators submitted that the 2nd property the subject of this succession Location 17/Kamahuha/T.63 belonged to their mother absolutely just as parcel No. Loc 17/Kamahuha/T.62 belonged to Muiruri Rugu absolutely and he sold it to a 3rd party.

(v) The 1st and 2nd Administrators are now seeking to inherit property known as Loc 17/Kamahuha/T. 63 absolutely and their mother's half share of Property known as Loc. 17/Kamahuha/1259/

5. The 1st and 2nd administrators submitted that the reasons for seeking to disinherit them are not supported by the Constitution of Kenya where woman rights are fundamental rights that are non-negotiable.

6. I have considered the rival submissions filed herein. I find that the issues for determination are as follows;

(i) Whether the 1st and 2nd Administrators are entitled to inherit their mother's share of the suit properties

(ii) When did the cause of action arise?

(iii) What law is applicable in this case?

7. On the first issue as whether the 1st and 2nd administrators are entitled to inherit their mother's share of the suit property, the objector submitted that the suit properties should devolve in accordance with the Kikuyu Customary law as the land originally belonged to the 3rd administrator's grandfather who died in 1978.

However, the mother of the 1st and 2nd administrator who was jointly registered with the father of the 3rd administrator died in 1999 when the Law of Succession Act had already come into force. I therefore find that the 1st and 2nd administrators have a right to inherit the property.

8. On the issue as to when the cause of action arose, I find that the cause of action arose in 1999 when the mother of 1st and 2nd administrator died and not in 1978 when the original owner died as alleged by the 3rd administrator.

9. On the issue as to what law is applicable, I find that the Law of Succession Act Cap 160 Laws of Kenya is applicable which came into force on 1st July 1981 and the same should be used to determine the sharing of the two parcels of land.

10. The 3rd Administrator has submitted that the 1st and 2nd Administrators are not entitled to inherit the parcels on the grounds that only

sons are entitled to inherit under Kikuyu Customary Law. However, I find that the law applicable as Law of Succession Act Cap Laws of Kenya and not Kikuyu Customary Law.

11. The 1st and 2nd Administrators submitted that the 3rd administrator has no right to claim a share in the first parcel Loc 17/Kamahuha/T.63 because his father Muiruri Rugu inherited Loc 17/Kamahuha/T.62 which he sold to a 3rd party.

12. The 1st and 2nd Administrators said concerning the second parcel of land Loc 17/Kamahuha/1259 their mother Kanuthu Rugu held the same jointly with the 3rd Administrator's father and they have submitted that it should be divided into two equal shares and they are entitled to half a share of the same.

13. The Property should devolve in accordance to section 40 of the Succession Act because the deceased was polygamous. Section 40 states as follows:

“40 (1) where an intestate has married more than once under a 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

(2) The Distribution of the personal and household effects and the residue of the net intestate estate within each house shall then be in accordance with the rules set out in section 35 to 38”

14. The rules in Section 35 to 38 stipulate that the surviving widow has a life interest after which the estate will devolve upon her children. I find that the claim by the 3rd Administrator that the 1st and 2nd Administrators are not entitled to inherit has no basis and the same is outlawed by Article 27 (4) of the Constitution of Kenya 2010.

15. I accordingly dismiss the objection and I direct that the suit properties namely:

1. Parcel known as Loc 17/Kamahuha/T.63

2. Parcel known as Loc 17/Kamahuha 1259 be shared as follows;

(i) The parcel known as 17/Kamahuha/T.63 to devolve upon the 1st and 2nd Admonistrators absolutely since the 3rd Respondent's father inherited Loc17/Kamahuha/T.62 which he sold.

(ii) The parcel known as 17/Kamahuha/1259 to be divided into two equal shares and the same to devolve equally amongst the children of the joint proprietors. The 1st and 2nd Administrators to inherit half share and the 3rd administrator and his siblings to inherit the other half share.

Orders to issue accordingly.

DELIVERED, SIGNED AND DATED IN OPEN COURT THIS 19TH DAY OF DECEMBER, 2018

ASENATH ONGERI

JUDGE OF THE HIGH COURT OF KENYA, NAIROBI