



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIVASHA

SUCCESSION CAUSE NO. 182 OF 2015

IN THE MATTER OF THE ESTATE OF OBENDI MWANGI NJOROGE (DECEASED)

NANCY NJERI MWANGI.....PETITIONER/1ST ADMINISTRATOR

AND

JOHN MUNIU MWANGI.....OBJECTOR/2ND ADMINISTRATOR

R U L I N G

1. On 6th May 2016 this court did issue a grant of Letters of Administration in favour of **Nancy Njeri Mwangi**, the original Petitioner herein. On 31/5/2016 the Petitioner sought orders of this court to restrain one **John Muniu Mwangi** from interfering with the properties listed as part of the estate of the deceased, namely **NYANDARUA/KITIRI/598** and **LOC.2/MARIIRA 1724**. The said **John Muniu Mwangi** also a son of the deceased was said to be intermeddling with the estate while denying other beneficiaries the use of land in question. **John Muniu Mwangi** responded by filing an application for the revocation of the grant to Nancy Njeri Mwangi.

2. On 8/6/2017, the court having heard the parties made orders in the following terms:

- “(1) THAT a fresh grant is hereby issued in the names of the Petitioner and the Objector.**
- (2) THAT a restraining order is hereby issued to restrain any beneficiary, including the administrators from leasing in any way alienating the property of the deceased pending confirmation of grant.**
- (3) THAT every beneficiary is allowed to continue to cultivate upon parcels being currently occupied by them.**
- (4) THAT the application to confirm the grant issued today be filed within 3 months of today’s date.**
- (5) THAT parties do file affidavit proposing mode of distribution in respect of all properties of the deceased.”**

A fresh grant issued in the joint names of the Petitioner and **John Muniu Mwangi** on 9th June 2016.

3. The parties filed separate applications to confirm the grant; the first, by **Nancy Njeri Mwangi** (1st Administrator), on 25th October, 2016 and the second, by **John Muniu Mwangi** (the 2nd Administrator) on 26th October 2016. Each Administrator swore an affidavit identifying the properties of the estate of

the deceased, the beneficiaries thereto and proposed their preferred mode of distribution of the estate.

4. For her part, the 1st Administrator proposes that all the beneficiaries share equally the land parcels **NYANDARUA/KITIRI/598** and **LOC.2/MARIIRA/1724**. She is supported in this regard by **Monica Nyambura Mwangi** (daughter of the deceased); **Esther Wanjiku Njoroge** wife of the son of the deceased, **Jotham Njoroge Mwangi** (now deceased); and **Esther Wangari Waweru** (wife of the deceased's son, **Stephen Waweru Mwangi** (now deceased)). The said beneficiaries are clearly identified on the chief's letter dated 22/10/2015. The beneficiaries appended their signatures and thumbprint to the consent for confirmation of the grant.

5. On the other hand, the 2nd Administrator and seemingly the only surviving son of the deceased, proposes that his two sisters **Monica Nyambura Mwangi**, **Nancy Njeri Mwangi** and sister in-law **Esther Wangari Waweru** each take 2 Acres while he gets 5.8 acres out of the land parcel **NYANDARUA/KITIRI/598**, which measures 11.6 acres.

6. Further, regarding land parcel number **LOC.2/MARIIRA/1724** measuring 1 acre, he proposes equal distribution among the above beneficiaries. He also identifies a land parcel (no particulars stated) at **Rumuruti** which allegedly measures 1 acre. He proposes it be sold and proceeds shared equally among the four beneficiaries.

7. In support of this proposal, which excludes the widow of his brother, namely, Esther Wanjiku Njoroge, he has relied on a copy of an agreement between the deceased and his children, and the said widow of **Jotham Njoroge. (Esther Wanjiku Njoroge)**. By the said agreement the said widow confirmed she had benefited from a gift of land at **Karati**, namely **Karati Farmers Plot No. 178**, whose new number is **NAIVASHA/NEW KARATI/1104** and measures 9 acres. Thus the said widow bound herself not to claim any further entitlement from the estate of the deceased. The agreement is signed and dated 12th December 1992.

8. The foregoing is also the substance of the application for revocation of the original grant which the 2nd Administrator filed on 7/6/2016, seemingly as a response to the 1st Administrator's application filed on 31/5/2016, as result of which he and the 1st Administrator were appointed by the court as Administrators of the estate.

9. There is no dispute that the two administrators are the children of the deceased, together with their sister **Monica Nyambura Mwangi**. And further, that **Esther Wanjiku Njoroge** and **Esther Wangari Waweru** were widows of the deceased's sons (both deceased), namely **Jotham Njoroge** and **Stephen Waweru Mwangi**, respectively.

10. From the various affidavits on record, particularly those by the 2nd Administrator filed on 6th June 2016, and in the application for confirmation, it seems that the deceased previously held a large portion of land in **Kitiri**, namely **NYANDARUA/KITIRI/75** which measured 34 acres. That following subdivision, five separate parcels namely **NYANDARUA/KITIRI/598**, **599**, **600**, **601**, and **602** were created and given as gifts to the children as follows:

a) Monica Nyambura Mwangi – NYANDARUA/KITIRI/599 – 6 acres

b) Stephen Waweru Mwangi – NYANDARUA/KITIRI/600 – 6 acres

c) John Muniu Mwangi – NYANDARUA/KITIRI/601 – 6 acres

d) Nancy Njeri Mwangi – NYANDARUA/KITIRI/602 – 6 acres

11. The land parcel **NYANDARUA/KITIRI/598** which measures 11.6 acres and is the subject of this cause, remained in the deceased's name. However, some of the beneficiaries have been using the said parcels for farming activities. These matters are relevant to the distribution, because it would appear that

the deceased made *inter vivos* gifts of land to all his children including the 2nd Administrator. The gifts were almost equal.

12. Thus it is difficult to understand why the 2nd Administrator feels entitled to 5.8 acres of the **Kitiri** land which would result in him receiving a total of 11.8 acres while begrudging the other beneficiaries and in particular, the widow **Esther Wanjiku Njoroge** of any share to **Kitiri** land, ostensibly because she had already received 9 acres of the **Karati** land parcel. However he must be commended for disclosing the existence of another land parcel in **Rumuruti** which is a part of the estate and which had not been stated in the Petition.

13. There was no affidavit filed to controvert the gift of 9 acres at **Karati** to the deceased husband of **Esther Wanjiku Njoroge** as stated in the agreement of 12/12/1992. I believe that if she were to share equally with other beneficiaries as proposed by the 2nd Administrator, she would end up benefiting more than other beneficiaries. Equally there is no justification for the 2nd Administrator getting more land in **Kitiri** than his sisters and the entitled widow of his brother.

14. Section 42 of the Law of Succession Act provides that previous benefits received by a child during the lifetime of the deceased “**shall be taken into account in determining the share of the net estate finally accruing to the child.....**” In this case, the deceased left no spouse and died intestate.

15. Section 38 of the Law of Succession Act provides that:-

“Where an intestate has left a surviving child or children but no spouse, the net intestate shall, subject to the provisions of Sections 41 and 42, devolve upon the surviving child, if there be only one or shall be equally divided among the surviving children.”

The two provisions apply in this case. The court’s duty in the distribution of an intestate estate to ensure equity, does not, necessarily entail equality based on mathematical precision between the beneficiaries.

16. **Omollo J A** (as he then was) stated in **Rono -Vs- Rono [2005] eKLR**).

“I had the advantage of reading in draft form the judgment prepared by Waki, J.A., and while I broadly agree with that judgment, I nevertheless wish to point out that I do not understand the learned Judge to be laying down any principle of law that the Law of Succession Act, Cap 160 of the Laws of Kenya, lays down as a requirement that heirs of a deceased person must inherit equal portions of the estate where such deceased dies intestate and that a judge has no discretion but to apply the principle of equality as was submitted before us by Mr. Gicheru. I can find no such provision in the Act.

My understanding of that section is that while the net intestate estate is to be distributed according to houses, each house being treated as a unit, yet the Judge doing the distribution still has discretion to take into account the number of children in each house. If Parliament had intended that there must be equality between houses, there would have been no need to provide in the section that the number of children in each hose be taken into account.

Nor do I see any provision in the Act that each child must receive the same or equal portion. That would clearly work an injustice particularly in a case of a young child who is still to be maintained, educated and generally seen through life. If such a child, whether a girl or a boy were to get an equal inheritance with another who is already working and for whom no school fees and things like that were to be provided, such equality would work an injustice and for my part, I am satisfied that the Act does not provide for that kind of equality.”

17. Thus doing my best in the circumstances of this case I would order that the deceased’s estate be distributed as follows:-

a) **NYANDARUA/KITIRI/598 – measuring 11.6 acres**

- 1) Monica Nyambura Mwangi
- 2) John Muniu Mwangi To share equally
- 3) Nancy Njeri Mwangi
- 4) Esther Wangari Waweru

b) **LOC.2/MARIIRA./1724 – measuring 1.26 acres**

- 1) Monica Nyambura Mwangi
- 2) Esther Wanjiku Njoroge
- 3) John Muniu Mwangi To share equally
- 4) Nancy Njeri Mwangi
- 5) Esther Wangari Waweru

c) Land Parcel at **Rumuruti** vide **Share Certificate No. 003289** in respect of shares in **Gema Holdings Limited** (acreage unascertained)

- 1) Monica Nyambura Mwangi
- 2) Esther Wanjiku Njoroge
- 3) John Muniu Mwangi To share equally
- 4) Nancy Njeri Mwangi
- 5) Esther Wangari Waweru

18. Each party will bear own costs.

Delivered and signed at Naivasha this **25th** day of **April, 2017**.

In the presence of:-

1st Administrator/Petitioner in person

Mr. Waigwa holding brief for Mr. Gichuki for the 2nd Administrator/Objector

Court Assistant – Barasa

C. MEOLI

JUDGE