



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
FAMILY DIVISION
SUCCESSION CAUSE NO. 2284 of 1996
IN THE MATTER OF THE ESTATE OF NDUNGU NJUNIE (DECEASED)

R U L I N G

1. The Court has before it an application for Confirmation of Grant. The Summons for Confirmation was filed on 14th December 2016. The Supporting Affidavit is a joint affidavit of Muses Njunie Ndungu and Peter Njunie Ndungu sworn on 1st December 2016 but filed on 1st December 2016. The Applicants are the current Administrators of the Estate.

2. Initially, the original Petitioners were Susan Wanja Ndungu and Moses Njunia Ndungu. In the Affidavit in Support of the Petition, the Family members surviving the Deceased are listed as follows:

- (a) Susan Wanja Ndungu
- (b) Moses Njunia Ndungu
- (c) Paul Kanithi
- (d) Esther Njeri Ndungu
- (e) Peter Njunia Ndungu
- (f) Daniel Njuguna
- (g) Mary Wanjiku Njunia
- (h) Michael Kanyere Ndungu
- (i) Serah Waithira
- (j) Markeret Wanjiku
- (k) Mercy Waithira
- (l) Jane Muthoni
- (m) Felista Njeri

The Deceased's assets were listed as

(a) DAGORETTI/RUTHIMITU/544

(b) PLOT No 531 Leshau

3. The Petition was Gazetted on 25th January 2014 under Gazette Notice No 881 of that year. Letters of Administration intestate were granted to Susan Wanja Ndungu and Moses Njunia on 15th April 2013. On 6th May 2013, the Joint Administrators applied for confirmation of the grant before the statutory period of 6 months. The Supporting Affidavit was a "joint supporting affidavit" of the two Administrators. The Affidavit informed the Court that "when the deceased herein passed on, on 12th January 1995, [the persons listed] sat down at family level, discussed and agreed that we file/petition this succession cause..." They also said; "THAT by mutual agreement, we agreed and appointed the two Administrators to petition the same on their behalf and on behalf of the **entire members of the Deceased's Family/Heirs/Beneficiaries.**" (Emphasis added). The Petitioners were represented by Advocates although not the same firm throughout.

4. The Court file shows that on 22st February 2013, the First Widow and her Children filed a Notice of Objection to Making of Grant. The Copy of the Object on the Court file is dated 21st February 2013 and filed on 22 February 2013. The Petitioner's Advocates, in the meantime, invited the Objectors' Advocates also to take a hearing date. The Invitation was dated 15th May 2013 and Served on 15th May 2013/ It was received by the Court on 20th May 2013. The Record shows that the Court was made aware of the Application of 22 February 2013 but it was also recorded that there was nothing to show that the application was filed. The Application is now on the file. On 9th April 2014, the Objectors sought more time to file the Supporting Affidavit. They were to be filed within 21 days. On 17th November 2014, the Court was made aware of the Objection and Directions were given for service and a further directions hearing on 22nd January 2015. On 17th February 2015, Hon Musyoka J Ordered that the Summons for revocation shall be heard in Nairobi. There is nothing on the record to show that either the Application for Revocation or the Notice of Objection was heard. At some point the First Administrator passed away and was replaced. The two Administrators are the sons of the Deceased from the Second house. However, on 24th March the Second Administrator filed a Further Affidavit. In it at paragraph 4 he says "THAT in 1996, the second and third households agreed that the two Administrators herein should go ahead and file this succession cause." Paragraph 5 states "The first household refused to co-operate as far as the filing of this succession cause was concerned. The Affidavit recognises that the Widow from the first house, Eunice Wambui Ndungu has through the Firm of P.K. Njoroge & Co Advocates objected to the confirmation. In fact she was objecting to the Grant. Paragraph 17 of the Affidavit says "*THAT the mode of distribution of the deceased's estate is fairly distributed as no beneficiary of the Deceased has been left out*".

5. Notwithstanding that the Notice of Objection was not heard, it and its contents are on the Court file. It may be that there are procedural inadequacies but it has not been heard or determined. It informs the Court that there is a first family. It informs the Court that the Deceased's First Wife, now Widow, is Eunice Wambui Ndungu. She had several children. That family was, and the Court assumes still is, comprised of the following members:

(a) Eunice Wambui Ndungu

(b) Mary Withera

(c) Elizabeth Wangari

(d) Hannah Njeri

(e) John Njunia

(f) Hellen Wanjiku

(g) Paul Muhika

(h) Michael Kanyiri

Those are all potential beneficiaries of the Estate. From the Consent to the filing of the “New Mode of Re-Distribution of the Deceased’s Estate, there was provision for the members of that family in Plot No 531 Leshau but not in Dagoretti/Ruthimitu/544 (part of which appears to have been sold). In addition, it is proposed that the Property be held by the eldest son of that house to hold on trust for the other family members. The reason for that is not clear. The Court was informed that Eunice Wambui Ndungu (the First Widow) is seeking 0,75 hectares of that property because that is where her matrimonial home is situated and she protested on 17th November 2014.

6. Before the Matter came before this Court on 25th January 2017, there was a change of representation and the Administrators are now represented by Messrs Peter Gachuhi & Co Advocates. On 25th January 2017, the Court was informed by Mr Gachuhi for the Administrators that the property must be held on trust because the portions were too small to be sub-divided. The Court therefore Ordered that :

1. The Administrators to file an Affidavit explaining exactly what are the terms of the Trust alternatively a different type of distribution in terms of joint landholding...”

7. On 20th March 2017 the matter came back before the Court. The Court was informed was a Supplemental Affidavit dated 13th February 2017. It was filed the following day. The Ruling was to be delivered on 25th May 2017 but due to other official duties it was deferred to 30th May 2017. Any inconvenience caused is regretted.

8. The Court therefor has before it a Summons for Confirmation with a suggested disposition set out in the Schedule Attached to the Supplemental Affidavit. The Schedule Shares out the two properties between various family members. The first (Dagoretti/Ruthimitu/544) comprised 1.22 hectares. It is divided between members of the First House and the Second House. In addition it is said that 0.10117 ha be registered in the name of the purchaser GABRIEL MICHAEL NGUGI absolutely. There are no details before the Court of how and when Gabriel Michael Ngugi became a purchaser of the land that was too small to sub-divide.

9. The Supplemental Affidavit does not clarify whether or not the matrimonial home of Eunice Wambui Ndungu has been preserved or subdivided or sold or otherwise distributed to another person. Moving on to the Consent to Distribution. The Consent is not signed by any member of the First House.

10. Under Section 71 of the Law of Succession Act the Court must be satisfied of the identity of ALL the Beneficiaries and the shares of the Estate that they will receive. Also that such distribution is in the best interests of the Estate. It provides:

71. (1) After the expiration of a period of six months, or such shorter period as The court may direct under subsection (3), from the date of any grant of representation, the holder thereof shall apply to the court for confirmation of the grant in order to empower the distribution of any capital assets.

(2) Subject to subsection (2A), the court to which application is made, or to which any dispute in respect thereof is referred, may—

(a) if it is satisfied that the grant was rightly made to the applicant, and that he is administering, and will administer, the estate according to law, confirm the grant; or

(b) if it is not so satisfied, issue to some other person or persons, in accordance with the

provisions of sections 56 to 66 of this Act, a confirmed grant of letters of administration in respect of the estate, or so much thereof as may be unadministered; or

(c) order the applicant to deliver or transfer to the holder of a confirmed grant from any other court all assets of the estate then in his hands or under his control; or

(d) postpone confirmation of the grant for such period or periods, pending issue of further citations or otherwise, as may seem necessary in all the circumstances of the case:

Provided that, in cases of intestacy, the grant of letters of administration shall not be confirmed until the court is satisfied as to the respective identities and shares of all persons beneficially entitled; and when confirmed such grant shall specify all such persons and their respective shares.....”

Under Article 40 of the Constitution of Kenya every person has the right to own property and not be denied of that right arbitrarily.

11. For the Reasons set out above, the Court cannot be satisfied that (a) all the beneficiaries have been provided for adequately, nor (b) that the Beneficiaries of the first house have consented freely to the distribution and (c) that the sale was conducted by someone who had the authority and good title to dispose of that part of the property in Dagoretti. Therefore the Application for Confirmation is dismissed.

12. It is further directed that the Applicants serve the Application and Affidavits upon each member of the First Family so that they are aware of what is suggested and/or proposed.

It is so Ordered,

FARAH S. M. AMIN

JUDGE

DELIVERED, SIGNED AND DATED at NAIROBI this 30th day of May 2017

In the Presence of

Court Assistant: Patrick

Mr Gachuhi for the Administrators