



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
FAMILY DIVISION
MISC. CAUSE NO. 75 OF 2015

IN THE MATTER OF THE ESTATE OF KARIUKI GATHUNGU - (DECEASED)

HANNAH NJERI KARIUKI.....1ST APPLICANT/ADMINISTRATOR

CHEGE KARIUKI GATHUNGU.....2ND APPLICANT/ADMINISTRATOR

MARTHA WANJIRU KARIUKI.....3RD APPLICANT/ADMINISTRATOR

VERSUS

STEPHEN GITAU KARIUKI.....1ST RESPONDENT/ADMINISTRATOR

NJENGA KARIUKI GATHUNGU....2ND RESPONDENT/ADMINISTRATOR

JUDGMENT

1. The deceased Kariuki Gathungu died on 13th January 2008 at Kenyatta National Hospital. He was survived by his widow Hannah Njeri Kariuki (1st applicant/administrator); daughter-in-law Phyllis Nyamangu; sons Chege Kariuki Gathungu (2nd applicant/administrator), Kelly Andrew Waweru Kariuki, Simon Kimani Kariuki, George Gichuru Kariuki, Stephen Gitau Kariuki (1st respondent/administrator) and Njenga Kariuki Gathuru (2nd respondent/administrator); and daughters Ruth Wambui Kariuki, Martha Wanjiru Kariuki and Esther Mugure Kariuki.

2. On 18th December 2013 the respondents petitioned the Senior Resident Magistrate's Court at Githunguri for the grant of letters of administration intestate in respect of the estate of the deceased. The grant was issued to them on 28th March 2014. On 30th January 2015 they filed application for the confirmation of the grant. They proposed a mode of distribution which was consented to by Phyllis Nyamangu, Esther Mugure, Kelly Andrew Waweru Kariuki, Simon Kimani Kariuki and George Gichuru Kariuki.

3. On 11th February 2015 Hannah Njeri Kariuki, Chege Kariuki Gathungu and Martha Wanjiru Kariuki applied to have the grant issued to the respondents revoked on the basis that they had not been informed that the petition was being filed, and neither had their consent been sought or obtained in the petition. It was alleged that the daughters of the deceased had not provided consent to the petition. On 24th March

2015 the same parties applied to have the Cause transferred to the High Court at Nairobi on the basis that, owing to the value of the estate, the subordinate court did not have jurisdiction to hear and determine the matter. The lower court dismissed the application. On 14th May 2015 they successfully got the dispute transferred to this court. The court directed that the parties deal with the issue of the distribution of the estate of the deceased. The respondents had in their application for confirmation shown their preferred mode of distribution. The applicants were asked to propose their mode, and the counsel for the parties to file written submissions over the same.

4. At this juncture it is necessary to show what properties are contained in the estate of the deceased. It does not appear to be in dispute that the deceased left parcel Githunguri/Githunguri/455 measuring 4.5 acres on which is the matrimonial home and on which the widow stays. Then there is a plot on Githunguri/Githunguri/T.67 on which shops have been developed. It measures 0.103 Ha. There is Githunguri/ Kagaa/103 measuring 1.8 Ha, Gilgil/Karunga Block 3/700 measuring 1.38 Ha. and Gilgil/Karunga Block 3/675 measuring 15.17 Ha. He left 962 shares at KTDA; 750 shares at Kiambu Tea Growers Sacco; 7704 shares at Kiambu Tea Factory; and shares at Santra Investment Bank, Kiambu Dairy and Pyrethrum Farmers Cooperative Account, Githunguri Dairy Farmers Sacco, Diamond Trust Bank, East African Breweries Ltd, Safaricom, Nation Media Group and Tai Sacco. Lastly, he left an account at Unity Finance Bank.

5. Before this court, applicants were allowed to co-administer the estate of the deceased jointly with the respondents until the grant was confirmed. On 21st January 2016 the applicants, Phyllis Nyamangu, Ruth Wambui Kariuki and Martha Wanjiru Kariuki filed a signed consent in which they asked the estate to be shared as follows:

(a) the 1st applicant to have life interest in Githunguri/Githunguri/455 and thereafter the property to devolve so that Martha Wanjiru Kariuki gets 1.25 acres and the balance to be shared equally to the rest of the beneficiaries;

(b) the 1st applicant to get Githunguri/Githunguri/T.67, Unity Finance Account and all the shares absolutely;

(c) all the beneficiaries (except the 1st applicant) to each get 1/10 undivided share in Gilgil/Karunga Block 3/700 and Gilgil/Karunga Block 3/675 absolutely; and

(d) the 1st applicant to have a life interest in Githunguri/Kagaa/103 and thereafter Esther Mugure Kariuki to get 1 acre and 4 acres to be equally distributed among the rest of the 9 beneficiaries.

6. The respondents filed their mode of distribution on 30th November 2015 which they said reflected the wishes of the deceased. They proposed that land parcel Gilgil/Karunga Block 3/700 be given to the 1st applicant. (She had already sold it); Gilgil/Karunga Block 3/675 be given to her; Githunguri/Githunguri/453 be equally shared (each to get 0.3061Ha) among Phyllis Nyamangu, Simon Kimani Kariuki, George Githuru Kariuki, Stephen Gitau Kariuki, Kelly Gitau Waweru Kariuki and the family of the late Peter Njenga Kariuki; Gatamaiyu/Kagaa/103 be shared equally (0.3062 Ha each) among Njenga Kariuki Gathungu, Martha Wanjiru Kariuki, Esther Mugure Kariuki, Ruth Wambui Kariuki and Chege Kariuki Gathungu; Githunguri/Githunguri/7.67 goes to Simon Kimani Kariuki as a whole; and all the shares be registered in the names of Stephen Gitau Kariuki and Njenga Kariuki Gathungu to hold in trust for the family.

7. To support the claim that the deceased left wishes on how his estate should devolve upon death, the respondents made reference to the family meeting held on 29th November 2008 where the said wishes were referred to by Hannah Njeri Kariuki. The minutes show that she said the following:-

“Mrs. Hannah Njeri Kariuki informed the meeting that she and her late husband had resolved to divide the estate amongst their children or their dependants and register it in their names but Mr. Kariuki passed away before the process was completed.”

The parcels that were being subdivided were Githunguri/Githunguri/455 and Githunguri/Kagaa/103, but the deceased had not indicated to whom the respective subdivisions would go. So that, when the meeting resolved that –

“Land was to be allocated on the basis of the verbal Will of the late Mr. Kariuki Gathungu”

that cannot be the case as the deceased did not leave any ascertainable or implementable wishes. This case is different from what happened in **Paul Kiruhi Nyingi & Another –v- Francis Wanjohi Nyingi [2009]eKLR** in which the wishes of the deceased were expressed in a book. And neither is the case similar to that in **Peter Chira & Another –v- Nelson Gathogo [2002]eKLR** in which the deceased had already distributed his property among his houses according to his wish and each house was using its own portion. I find that the deceased left no wishes, and therefore this estate has to devolve in accordance with **section 35 of the Law of Succession Act (Cap 160)**. He died intestate.

8. There is no dispute that the deceased and Hannah Njeri Kariuki (1st applicant) had a matrimonial home on Githunguri/ Githunguri/455. Hannah had an overriding interest in the property, although registered in the name of the deceased. As long as she is alive, she cannot be evicted from the home and the land (**Bob Njoroge Ngarama –v- Mary Wanjiru Ngarama & Another [2014]eKLR**). I find that she will have a life interest over this property. When she dies the same shall be shared equally to the children of the deceased.

9. Githunguri/Githunguri/T.67 is a plot with rental shops. Hannah swore that she lives off the rental income from the shops. I find that she will have life interest in the property and continue to receive and use the rent. Upon her death the property shall be registered in the names of Chege Kariuki Githungu, Stephen Kariuki Gathungu, Njenga Kariuki Gathungu and Phyllis Nyamangu to hold in trust for themselves and for the rest of the beneficiaries.

10. It was stated that Hannah had sold land parcel Gilgil/Karunga Block 3/700 for Kshs.735,000/= to one David Wathu Njuguna with the consent of the family. This sale was in anticipation that the parcel would be inherited by her. To enable the purchaser get title to it, the parcel is hereby allocated to her (Hannah) absolutely. This leaves Gilgil/Kamunga Block 3/365 and Gatamaiyu/Kagaa 103 each of which shall be shared equally among all the beneficiaries, except Hannah.

11. The shares of the deceased at Santra Investment Bank, Kiambu Dairy and Pyrethrum Farmers Cooperative Account, Kiambu Tea Growers Sacco, Githunguri Dairy Farmers Sacco, Kiambu Tea Factory, Diamond Trust Bank, East African Breweries Ltd, Safaricom, Nation Media Group, KTDA, Tai Sacco and at Unity Finance Bank shall be shared equally by all the beneficiaries of the deceased, except Hannah.

12. On that basis, therefore, the grant of letters of administration intestate in respect of the estate of Kariuki Wathungu issued jointly to the applicants and the respondents is hereby confirmed.

DATED, DELIVERED and SIGNED at NAIROBI this 17TH day of MAY 2017.

A.O. MUCHELULE

JUDGE