



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
FAMILY DIVISION
SUCCESSION CAUSE NO. 1234 OF 2013

IN THE MATTER OF THE ESTATE OF TIMAN NDERE NJUGI - (DECEASED)

MARGARET WAITHIRA NJUGI.....1ST PETITIONER

JAMES KEMBI GITURA.....2ND PETITIONER

VERSUS

SUSAN WANJIRU NJUGI.....1ST OBJECTOR

MARY MWIHAKI NJUGI.....2ND OBJECTOR

JUDGMENT

1. The deceased Timan Ndere Njugi was an advocate of the High Court of Kenya. He died on 28th October 2012 at Nairobi West Hospital. He was domiciled at Ongata Rongai in Kajiado. He left a widow Margaret Waithira Njugi (1st petitioner) and six children:-

- (a) Andrew Onesmus Njugi;
- (b) Nelly Wanjiku Njugi;
- (c) Mary Mwihaki Njugi (the 2nd objector);
- (d) Jennifer Mugure Njugi;
- (e) Daniel Gicharu Njugi; and
- (f) Susan Wanjiru Njugi (1st objector).

2. On the basis that the deceased left a written Will, on 30th May 2013 the executors of the Will 1st petitioner and James Kembi Gitura (2nd Petitioner) petitioned this court for grant of probate. The Will showed that it was made on 27th March 1993. In it he gave some properties to three other women, and gave all other properties and assets to the 1st petitioner absolutely. In addition, he gave her all the residuary estate with power to invest the income from it and use the same for the upkeep and maintenance

of her children. He gave her power at her discretion to give or distribute the remaining assets and properties to all her children in any manner that she deemed fit and at a time of her choice. The grant was issued on 23rd August 2013. On 17th April 2014 the petitioners filed an application to have the grant confirmed. On 1st July 2014 the objectors filed a notice objecting to the confirmation. Their case was that the purported Will –

“may not be my father’s last Will and testament as he had subsequently acquired other properties.”

They stated that the purported Will had not been executed in accordance with the law; the properties in the Will had not been identified and the mode of distribution was unknown; the wording in the Will did not make it mandatory for the children to be given any shares; and the Will had given unfettered discretion to the 1st petitioner as regards the distribution of the estate. When the objectors testified, they stated that when the deceased was alive he always indicated to them and in family meetings that upon his death his estate would be shared equally among the children and therefore they did not trust this Will that said something different. They did not believe that this was their late father’s Will. They stated that the Will was an afterthought; a creation of their mother.

3. On 9th July 2014 the 1st petitioner responded to the objection by sworn affidavit. She stated that after the deceased’s death, she was checking through his documents when she found the Will about March 2013. She got the family summoned to Sagret Hotel on 5th April 2013 when the Will was read, and a copy given to each family member. (The objectors acknowledge attending this meeting and the Will having been read to them). It was after this reading that the petitioners filed the petition. She stated that the Will may not make reference to all the property of the deceased because some of it was acquired after it was made. She made reference to paragraph 8 of the Will which talks of the residuary of his estate. She further stated that in the petition of grant of probate she had indicated the estate of the deceased as follows:-

1. Assets

- a) Kajiado/Kisaju/588;
- b) Kajiado/Loodariak/1060;
- c) Limuru/Bibirioni/1552;
- d) LR No. 36/III/1043;
- e) LR No. 36/III/1044
- f) Plot 52/Business/Ololoitikoshi Trading Centre
- g) Plot 50/Business/Ololoitikoshi Trading Centre
- h) Britam Unit Trust A/C BA09552
- i) Co-operative Bank Account No. 0110000601800
- j) KBM 547S Pajero IO
- k) KUT 597 Volvo Saloon
- l) KAC 801N Nissan Sunny Saloon
- m) KQP 197 Mercedes Benz

She listed the liabilities to be:-

- a) Francis Maina Mbugua - Kshs.100,000.00
- b) Nelson Gichohi Mwangi – Kshs.200,000.00
- c) Geoffrey Kamicha – Kshs.47,000.00

4. When the petitioners sought the confirmation of the grant of probate, they asked that after the grant is confirmed they will administer the estate in accordance with the Will. The objectors expressed fears that the 1st petitioner would unfairly treat them when it comes to the distribution of the Will. She is their mother, but it was clear that there was obvious bad blood between them. They do not talk to their mother. The 1st petitioner stated in court that she was going to treat the objectors fairly, just like any of her children; that she was ready and willing to provide for them. It is on this basis that the court asked her to propose how she wanted to distribute the estate. The objectors were asked to propose how they wanted the estate to be distributed. The 1st petitioner had a meeting with the rest of her children and agreed on a mode of distribution. On the list of land properties was their respective measurement and estimated values. She indicated that the most valuable properties left by the deceased were the plots in Eastleigh, LR No. 36/III/1043 and LR No. 36/III/1044. Each measured 30m x 60m and was worth Kshs.45,000,000/=. Each was developed. The 1st petitioner proposed that LR No. 36/III/1043 goes to the objectors jointly, and LR No. 36/III/1044 goes to Nellie Wanjiku Njugi and Jennifer Mugure Njugi jointly. The two properties, however, had outstanding stamp duty and that was why, although they belong to the deceased, they were yet to be transferred into his name. The 1st petitioner gave a proposal how the stamp duty was to be paid. She stated that parcel Kajiado/Kisaju/588 measures 22 acres and is worth about 44,000,000/=. She proposed that 6 acres of it and then parcels Kajiado/Loodariak/1060 (20 acres) and worth Kshs.6,000,000/=. Plot 50/Business/Ololoitikoshi (30m x 60m) and worth Kshs.300,000/= and plot 52/Business/Ololoitikoshi (30m x 60m) worth 300,000/= and vehicles KUY 597 (worth Kshs.100,000/=) and KAC 801N (worth Kshs.70,000/=) be sold and the proceeds be used to pay the stamp duty. She gave 8 acres of Kajiado/Kisaju/588 to Andrew Njugi and the remaining 8 acres of it to Daniel Gichuru Njugi. Limuru/Bibirioni/552 is one acre and was worth 3,000,000/=. She gave it to herself. Same for vehicle KBU 547S. Britam Unit Trust had Kshs.157,303/97 as of 31.10.94. She asked that the money be shared equally to the seven beneficiaries. The Cooperative Bank account has Ksh.15,635/55. She shared it equally to the seven. She swore that, considering the values of each of the properties, the distribution was fair to each beneficiary.

5. According to the objectors, the value of Kajiado/Kisaju was Kshs.66,000,000/=. Kajiado/Loodariak/1060 Kshs.20,000,000/=. Limuru/Bibirioni/1552 Kshs.6 million, LR No. 36/III/1043 Kshs.35,000,000/= and LR No. 36/III/1044 Kshs.35,000,000/=. They stated that the deceased left two other parcels, Ngong/Ngong/28355 (Masai Lodge) worth Kshs.30,000,000/= and Ngong/Ngong/58244 – Ongata Rongai (Subdivided) Kshs.240,000,000/=(.

6. The 1st petitioner produced a title deed to show that she was owner of Ngong/Ngong/3543 and Ngong/Ngong/3542 (registered in 1986 and 1979) which were consolidated into Ngong/ Ngong/58244. She denied that this was a matrimonial property. The 2nd objector admitted that she did not know how the parcel was acquired. The 1st petitioner further produced evidence to show that Ngong/Ngong/28355 was jointly owned by her and the deceased. Upon the deceased's death, she stated, this became her property. According to her, the two properties cannot be considered to belong to the deceased. I accept that evidence. These properties do not form part of the estate of the deceased.

7. To show that the 1st petitioner was unfair to the objectors, they stated that she has since given ¼ of an acre to Daniel Njugi, ¼ of an acre to Jennifer Mugure Njugi and ¼ of an acre to Andrew Onesmus Njugi. The portions came from Ngong/Ngong/58244 once again, these portions came from a parcel that is owned by the petitioner and which is not part of the estate of the deceased.

8. The objectors want that LR No. 36/III/1043 be given to Andrew Onesmus Njugi jointly and LR No.

36/III/1044 be given to Nellie Wanjiku and Jennifer Mugure jointly. Then, 1st objector gets 8 acres and 2nd objector 8 acres of Kajiado/Kisaju/588. 6 acres from the parcel and Kajiado/Loodariak/1060 to be sold to pay the debts.

9. It is common ground that the values attributed to the properties that form the estate of the deceased are estimated. No valuation has been done.

10. It is also considered that, as a mark of good faith, the 1st petitioner was willing that the deceased's entire estate be valued and sold and the proceeds be shared equally among the seven beneficiaries, after liabilities have been paid. This was not acceptable to the objectors.

11. As for the Will, the 1st petitioner called Vincent Muia (DW1), an advocate of the High Court of Kenya, who testified that he was in 1993 working for the deceased's firm of advocates and that on 27th March 1993 the deceased called him asked him to witness this Will which he had drawn. The deceased signed the Will in his presence and he witnessed it. That evidence was not challenged by the objectors. The Will was signed by another witness Lenny Kivuti who was not called. I accept it and find that this Will was drawn by the deceased who properly signed it and it was witnessed by DW 1 and another. This is the deceased's valid Will. It represents his last wishes as to how he wanted his estate to devolve upon death. There is no material basis upon which the objectors can challenge the Will. In any case, the 1st objector admitted that in 1993 she was 18 and in High School and did not at the time know about Wills. The 2nd objector stated that she did not know under that circumstances the deceased made the Will, and what his state of mind was.

12. This court recognises that under **section 5** of the **Law of Succession Act (Cap.160)** the deceased had an unfettered testamentary freedom to dispose of his property as he wished. The objectors may not be on good terms with their mother (the 1st petitioner) but, after listening to her, it became clear to me that she had a clear intention to reasonably provide for each of the beneficiaries, including the objectors. It is for these reasons that I confirm that grant of probate made to the petitioners on 23rd August 2013 and allow the distribution proposed in paragraphs 4 and 5 of the affidavit sworn by the 1st petitioner on 17th July 2015 and filed on 20th July 2015.

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

A. O. MUCHELULE

JUDGE