



REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI
FAMILY DIVISION
IN THE MATTER OF THE ESTATE OF DARIUS NJOROGE KAIME (DECEASED)
SUCCESSION CAUSE 901 OF 1999
JUDGMENT

PLEADINGS

Darius Njoroge Kaime died on 12th December 1997.

Josephine Wanjiku Njoroge filed petition for grant of letters of administration and listed survivors of the deceased as;

- a. **Mary Wambui Njoroge- 2nd widow**
- b. **Francis Kaime**
- c. **John Michael Njoroge Kaime**
- d. **Sarah Muthoni Ainley**
- e. **Alice Wairimu Kamau**
- f. **Milly Wanjiku Kaime Atterhog**

The assets that comprise of the deceased's estate are;

- a. **Plot Narok Town**
- b. **Industrial Plot 1050**
- c. **Olchoro Plot 53**
- d. **Ntolele Plot 272**
- e. **Olopito Group Ranch**
- f. **Kisilili Plot**

The grant was issued on 25th January 2000 to the Petitioner. The 2nd widow Mary Wambui Njoroge filed Summons for revocation of grant on 18th April 2002. By Consent the grant was reissued in the names of

both widows as administrators of deceased's estate.

On 30th July 2003 the administrators filed summons for confirmation of grant. The list of beneficiaries and assets that comprise the deceased's estate were not contested.

The proposed mode of distribution by the 2nd widow Mary Wambui Njoroge was as follows;

- a. **Industrial Plot no 1050 Narok town-Mary Wambui Njoroge**
- b. **Narok/Kisilili/35- Josephine Wanjiru Njoroge**
- c. **Olopito Group Ranch No 232- Francis Kaime Njoroge**
- d. **Olopito Group Ranch No 151- John Michael Njoroge**
- e. **Ntulele plot number 272 - Mary Wambui Njoroge**

The 1st widow Josephine Wanjiru Njoroge filed protest to summons for confirmation of grant on 9th October 2003 and proposed he distribution to be as follows;

1. **Industrial Plot no 1050 Narok town-to be shared equally between Mary Wambui Njoroge,Josephine Wanjiru Njoroge, Francis Kaime Njoroge, John Michael Njoroge**
2. **Tourism Calims Minutes-Wildlife compensation Claim Min/nos 105/85, 318/84, 40/86-D.N.Kaime to be shared equally between Mary Wambui Njoroge,Josephine Wanjiru Njoroge, Francis Kaime Njoroge, John Michael Njoroge**
 - c) **Narok/Kisilili/35- Josephine Wanjiru Njoroge**
 - d) **Olopito Group Ranch No 232- Francis Kaime Njoroge**
 - e) **Olopito Group Ranch No 151- John Michael Njoroge**
 - f) **Ntulele plot number 272 - Mary Wambui Njoroge**

On 23rd October 2009 the beneficiaries; Francis Kaime Njoroge and John Michael Njoroge filed application for substitution of administrators from their mothers 1st widow Josephine Wanjiru Njoroge mother to all children of the deceased and Mary Wambui Njoroge who had no children had died on 22nd April 2002 and the Applicants were appointed administrators with consents of all beneficiaries of the estate.

On 1st August 2016, the administrators filed summons for confirmation and proposed the mode of distribution that all beneficiaries, children of the deceased share equally all properties that comprise of the estate of the deceased. All other beneficiaries signed consents except for Francis Kaime Njoroge who filed Protest on 3rd November 2016 and Further Affidavit on 1st March 2017. The grounds of protest were that, he was not served the summons directly, the proposed mode of distribution is unfair to him and some beneficiaries and the proposed mode of distribution was not in tandem with their parents' wishes.

John Michael Njoroge filed Further Affidavit on 15th September 2016 and 15th December 2015 clarified that the Protestor did not want to participate in the summons for confirmation process. They tried to serve him directly, called him on his cellphone and sent various correspondence through Counsel to him and he did not respond. He has delayed the confirmation of grant and is the only one who declined to sign consent.

On 6th March 2017 the Protestor, Francis Kaime Njorogetestified that one of their sibling Wallace Nganga Njoroge who died in 1994 left a widow Esther Wairia Kagema and 2 children, namely Wallace

Njoroge Nganga and Kevin Kageka Nganga. They were not allocated any property in the proposed distribution of the estate.

Secondly, he claimed he was given land; gift *inter vivo* by his late father the deceased in 1996 a year before died. It is a Plot next to Olopito Ranch 231 but he does not know its number. Therefore all properties maybe distributed except Olopito Ranch 231 and 158. He claimed he required 4-6 months to consult and agree on the distribution of the deceased's estate.

In cross examination, the Protestor claimed he was allocated Plot 53 as gift *inter vivos*.. He then changed tact and claimed that he was allocated Olopito Ranch 158 and the family of late Wallace Nganga Njoroge Olopito Ranch 231.

John Michael Njoroge also testified and stated that their father told him to bequeath Olopito Ranch 231 to Esther Waria Kageka and 2 sons through the eldest son Francis Kaime Njoroge. He had done so. He refused that the Protestor was allocated any land by the deceased, he already gave him his share of their late mother's property and would give him any other land he wanted in good conscience.

DETERMINATION

The issue before court is the distribution of the deceased's estate as shown in the summons for confirmation filed on 1st August 2016.

The Protestor's claim of gift *inter vivos* is not borne out by cogent evidence. There is no written Agreement, presence of any witness; relative or elder(s) who witnessed the gift to Protestor.

Secondly, the family of the stated late brother Wallace Nganga Njoroge if confirmed shall be entitled to the share that would have been allocated to their father, son of the deceased.

Thirdly, The Protestor cannot prove any unfairness in the proposed distribution of deceased's estate as it is equally amongst all children of the deceased as required by **Section 38 of Law of Succession Act**.

The Protestor was contacted and severally called to participate in the confirmation proceedings as evidenced by copies of letters from the Applicants' Counsel attached to the Co administrator's affidavit. He chose not to participate. It is not clear why he needs more time to consider the proposal and he has not laid basis for more time except to delay the just conclusion of this matter.

DISPOSITION

- 1. This Court finds no basis or merit in the Protest.**
- 2. The Protest is dismissed and the summons for confirmation application filed on 1st August 2016 is granted in the terms outlined in the affidavit in support of the Application; the beneficiaries , all children;(both male and female married or unmarried) of the deceased shall share equally all the assets that comprise of the deceased's estate except;**
- 3. Olopito Group Ranch 231 that is to be shared by children of late Wallace Nganga Njoroge namely;**
 - a. Wallace Njoroge Nganga &**
 - b. Kevin Kageka Nganga.**
- 4. Each party to bear its own costs.**

DELIVERED DATED & SIGNED IN OPEN COURT ON 28TH JUNE, 2017.

M.W.MUIGAI

JUDGE

IN THE PRESENCE OF: