



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
SUCCESSION CAUSE NO. 2412 OF 2005
IN THE MATTER OF THE ESTATE OF NJUGUNA WANJOHI
(DECEASED)
JUDGMENT

INTRODUCTION

The deceased died on 10th January 1978 as per death Certificate of Death dated 4th April 1978.

A citation to accept or refuse letters of administration intestate was filed on 31st August 2005 by Mugechi Njuguna, widow to the deceased. The same was served to all the parties and they all entered appearance.

Following a letter from the chief filed on 16th May 2006, the following survived the deceased:

- 1. Mugechi Njuguna- wife**
- M2. bachia Njuguna- son**
- 3. Mwangi Njuguna- son**
- 4. Muchoki Njuguna- son**
- 5. Irungi Njuguna-son**
- 6. Danson Irungu Njuguna-son**
- 7. Jane Muthoni- daugheter in law**
- 8. Dina Njoki - daughter in law**
- 9. Patrick Maina Njuguna-son**
- 10. Christopher Wanjohi Njuguna-son**

The clan elders are Peter Mwangi Wanjohi and Mwangi Karugu. A grant of letters of administration intestate was issued 2nd October 2006 vide Consent to Grant of Letters of Administration filed on 11th May 2006, Mwangi, Danson, Patrick and Christopher appended their signatures consenting to Mugechi and Mbachia being granted letters of administration of the estate of the deceased.

The Administrators' and Beneficiaries' Consent to Distribution was filed on 12th June 2007. All the

beneficiaries appended their signatures to this document except Muchoki Njuguna, Irungu Njuguna, Jane Muthoni and Dina Njoki.

A Summons for confirmation of Grant was filed on 12th June 2007. A certificate of confirmation of Grant was then issued on 30th October 2007.

Thereafter, Summons for Revocation of the same grant was filed under Certificate of urgency on 9th July 2012 by Irungu Njuguna and Jane Muthoni Mwariri on the grounds that the proceedings to obtain the grant were defective in substance as the entire process was flawed. The Objectors were not served with the relevant documents after entry of appearance. The Petitioners made false statements when obtaining the grant of representation averring inter alia that; the deceased was a polygamous man, there was no likelihood of an objection being filed by any persons, and the shares of all persons beneficially entitled have been ascertained and determined. Finally, the Petitioners concealed the fact that the Applicants were not served with the certificate of confirmation of grant nor had they consented to the distribution of the estate whereas the applicants were entitled to quarter shares each out of the land parcel Fort Hall/Loc 12/SuLoc. 3/71 of which they are still in actual possession.

The Applicants brought summons for revocation because the Administrator threatened to evict the Applicants from their half share of the suit land where they grow crops. The Applicants will be dispossessed of their right and share of the estate despite the fact that they were not granted a hearing at all. In light of this the Applicants also sought conservatory orders restraining the Petitioners/Administrators from interfering with land parcel Fort Hall/Loc 12/SuLoc.3/71 including the Applicants possession and continued use of it.

By an order of the High Court by Justice GBM Kariuki, dated 12th July 2012, the above conservatory orders sought were granted. Proceedings from 15th June 2007 were then typed as per the direction of this court issued on 23rd March 2015 being the date this matter was last in court.

HEARING

PW 1 Irungu Njuguna testified that Kinyanjui Waiguru, the deceased had 3 wives, Mumbi Wangechi and Mugechi. The deceased had three wives, namely;

- **Mumbi, whose son is Muchoki**
- **Wangechi, whose sons are Kamau(deceased), Mwangi Njuguna(deceased) and Irungu Njuguna**
- **Mugechi, whose children are; Mbachia Njuguna, Mwangi Njuguna, Christopher Wanjohi Njuguna, Danson Irungu Njuguna and Patrick Maina Njuguna.**

The house of Mumbi have no dispute, the issue is with the house of Mugechi. He claimed the suit property **Fort Hall/Loc 12/SuLoc.3/71** half share and Jane Muthoni PW2 widow of his younger brother Kamau ought to have the half share of the same property. In 1966, his father divided the land in half, his share as his mother died before Mugechi was married; and the share of Mugechi and her children. He was born on this land and lived there and farmed with his brothers until he bought a portion of land and moved to the same but he cultivates the land to date. He had a brother named Mwangi Njuguna who was also given two acres of land by the deceased. He has no idea how many parcels of land the deceased has. He was brought up by Mugechi. Mumbi got land which was inherited by her son Muchoki. Therefore he is pursuing his half share.

PW2 Jane Muthoni widow of Peter Kamau Njuguna the Objector's younger brother who died in 2000. She informed Court that Wangechi Njuguna wife to the deceased had 5 sons PW1 and her husband. The dispute is with the house of Wangechi and Mugechi all family members reside on Fort Hall/Loc 12/SuLoc.3/71 which is 3.8 acres. PW2 was married in 1980 when she came on the land, she found 1st widow Mumbi died in 1979, 2nd widow Wangechi died long time ago and Mugechi was alive and she also was given land to reside in in the said suit property. According to PW2 Irungu Njuguna was to use the land and give to Peter kamau Njuguna her late husband.

PW3 Muchoki Njuguna eldest son of the deceased only son and child of the 1st wife Mumbi stated that He was allocated his late mother's share 1acre. In 1966 his father divided the suit property into 2 parts, Mugechi who was married in 1955 had her portion of the land and the other portion was for PW1 and PW2's late husband share of their late mother Wangechi. He was present when the deceased called elders Chege wa Gathiga, Mwangi wa Ndungu Phillip Gachanja and he was present when the deceased divided this land.

DW1Mbatia Njuguna Children of Mugechi told the Court that the Objectors are not entitled to the land , the same was allocated to their mother and therefore did not involve them in the confirmation of grant process. Irungu and Kamau children of Wangechi did not live on the shamba they had left. On the other hand they were born and have been on the shamba for years. They claimed that land belonging to PW1 and PW2 on behalf of late husband is with Mwangi their eldest brother.

DW2 Reuben Mwangi Thuo relative to Mugechi 3rd wife of the deceased. He said that Irungu Njuguna and Peter Kamau Njuguna deceased represented by widow Jane Muthoni Mwareri cannot claim any portion of the suit property. He intimated that the land belonging to children of Wangechi was allocated to Mwangi, who has since died and his widow Dina Njoki stated she was not interested in the succession proceedings.

Irungu Njuguna PW1 and PW2 Jane Muthoni on behalf of Peter kamau Njuguna (deceased) were claiming from Mugechi the 3rd wife of the deceased who brought them up as their mother Wangechi died long time ago and she had only given them a part of the shamba to cultivate. they cannot claim their part of the shamba on the suit property.

SUBMISSIONS

On 2nd November, 2016 the Applicants filed written submissions in which they avered that the grounds for revocation were essentially that the two Applicants were shut out from participating in the proceedings and more significantly from the confirmation stage. They state that on 10th February 2014, the court gave direction that the issue for determination was to be whether Irungu Njuguna and Jane Muthoni Mwariri are entitled to inherit a portion of the suit land Fort Hall/Loc 12/SuLoc.3/71 which is approximately 3.8 Acres.

The respondents did not file written submissions.

DETERMINATION

The issues arising are;

- a) Whether the grant should be revoked. as it was not properly obtained as required under Section 76 of Law of Succession Act Cap 160?**
- b) Are PW1 Irungu Njuguna and PW2 Jane Muthoni widow of Peter Kamau Njuguna Deceased entitled to a portion of land from suit property Fort Hall/Loc 12/SuLoc.3/71?**

It is not in dispute that PW1 and PW2 on behalf of the deceased are children of the deceased herein by the 2nd wife Wangechi who died a long time ago. The 2 lived and were brought up by Mugechi 3rd wife /widow of the deceased. Therefore the petition for letters of administration ought to have included all beneficiaries of the deceased as required by **Section 51 of Law Of Succession Act Cap 160**. It is on record that they were served with citation and they entered appearance but from there they were not involved in the succession process. The serving of citation is proof that they were to be involved in the process but later the 3rd House excluded the 2nd house.

The Applicants/Objectors did not consent to distribution of the deceased's estate and the grant is subject to revocation and annulment under **Section 76(a)(b) and (c) of the Law of Succession Act**. The process of obtaining the grant and confirming the same was defective and the parties concealed material facts to

the Court.

A grant of representation, whether or not confirmed, may at any time be revoked or annulled if the court decides, either on application by any interested party or of its own motion -

(a) that the proceedings to obtain the grant were defective in substance;

The 2nd issue is whether the land given to Mwangi Njuguna son of Wangechi was so given absolutely or in trust for the Applicant and the rest of the house of Wangechi considered as the entitlement for the Applicants.

From the Affidavit dated 25th February 2013, at page 3 the Respondents deponed that the Applicants from the house of Wangechi should pursue Dina Njoki, the widow of Mwangi Njuguna, Wangechi's eldest son who was allocated by the deceased 2 parcels from the deceased, namely Loc12/Sub-loc 3/72 and Loc12/sub-loc 3/829.

The Applicants on the other hand maintain that land given to their deceased brother Mwangi by their father was a gift given to him by the deceased when he got married. He did not hold it in trust for his brothers and it was wrong for the Respondents to deny the Applicants their rightful portions of their father's estate. The Applicants claimed that they have always been in possession of that portion of land and the deceased actually shared the suit land between the late Mugechi and the 2 Applicants equally.

The deceased died on 10th January 1978 and the Law of Succession became operational in 1980. therefore the operative law ought to be in terms of distribution of the estate Kikuyu customary law.

Section 2(1) and (2) of the Law of Succession Act states as follows:

2. (1) Except as otherwise expressly provided in this Act or any other written law, the provisions of this Act shall constitute the law of Kenya in respect of, and shall have universal application to, all cases of intestate or testamentary succession to the estates of deceased persons dying after the commencement of this Act and to the administration of estates of those persons.

(2) The estates of persons dying before the commencement of this Act are subject to the written laws and customs applying at the date of death, but nevertheless the administration of their estates shall commence or proceed so far as possible in accordance with this Act.

The portion of land was allocated to late Mwangi Njuguna Son of Wangechi by his father the deceased as a wedding gift. His wife and children have been residing on that land to this day. There is no evidence to prove that this land was being held in trust for Irungu Njuguna and Jane Muthoni Mwariri widow of Peter Kamau Njuguna who are children of the deceased.

The evidence by PW2 only and eldest son of the deceased by 1st wife Mumbi stated in Court, that in 1966 the deceased called elders and he was present when the deceased allocated a portion of the suit property to PW1 and to share with PW's late husband and younger brother as children of his late wife Wangechi. This evidence was not controverted by any other evidence. infact, pw1 has been cultivating the land todate though he lives on land that he bought and PW 2 resides on the said land todate. If they were granted permission to cultivate the land by 3rd widow of deceased Mugechi as alleged by DW1& 2 then, why did the widow not depose this fact in the pleadings and demand they vacate the land at the earliest opportunity during the proceedings to obtain a grant for distribution of the deceased's estate? This court is satisfied by evidence on record that PW1 and PW2 were irregularly and illegally excluded from the proceedings to obtain the grant to the deceased's estate. Secondly, they are entitled to a portion of the suit property Fort Hall/Loc 12/SuLoc.3/71.

DISPOSITION

1.The application for revocation and annulment of grant filed on 9th July 2012 is granted.

2.The grant issued on 2nd October 2006 and confirmed on 30th May 2007

3.A fresh /new grant is issued in the names of Mugechi Njuguna- surviving spouse Mbachia Njuguna representing 3rd House Irungu Njuguna representing 2nd house

4.The orders to preserve the suit property Fort Hall/Loc 12/SuLoc.3/71 under Section 45 of Law of Succession Act Cap 160 to remain in force until confirmation of grant and distribution of the estate.

5.PW1 Irungu Njuguna and PW2 Jane Muthoni Mwariri widow of Peter Kamau Njuguna (Deceased) shall obtain a share of the suit property alongside other beneficiaries.

6.The new administrators to involve and consult all beneficiaries with a view to filing summons for confirmation of grant.

7.Each party to bear own costs.

DELIVERED DATED & SIGNED IN OPEN COURT ON 16TH JUNE 2017.

M.W.MUIGAI

JUDGE