



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
SUCCESSION CAUSE NO. 824 OF 2014
IN THE MATTER OF THE ESTATE OF MUNGAI MUNYAKA (DECEASED)
RULING

PLEADINGS

The deceased, Mungai Munyaka died on 19th November 2012. He was survived by the following beneficiaries:

- i. Cecilia Wanjiru Mungai - Widow**
- ii. Joseph Kamande Mungai– Son**
- iii. Peter Mungai Kimani – Son (deceased)**
- iv. Bernard Thomas Ngugi Mungai - Son**
- v. David Muiruri Mungai - Son**
- vi. Vincent Kinuthia (deceased)**
- vii. Agnes Wambui Njenga - Daughter**
- viii. Maria Magdalene WanjeraMungai – Daughter**
- ix. Samuel Muchiri Kinuthia - Grandson**

His estate comprised of two properties; Plot Ngong/Ngong/6590 (3 acres) and Plot Ngong/Ngong/5021(2acres). The deceased's widow Cecilia Wanjiru Mungai petitioned the court for letters of administration intestate of the deceased's estate on 10th October 2014. The grant was issued to her on 27th January 2015. She later filed summons for confirmation of the grant on 1st December 2015 seeking orders:

- a. That the grant of letters of administration made to the said Cecilia Wanjiru Mungai in this matter on the 27th January, 2015 at Nairobi be confirmed.**
- b. That the costs of the application be in the cause.**

In her affidavit in support of the summons for confirmation of grant dated 23rd November 2015, Cecilia Wanjiru Mungai stated that the above beneficiaries of the deceased's estate had all consented to and agreed to have the properties absolutely given to her. She attached letters by the other beneficiaries consenting to the confirmation of the grant and to the distribution of the estate. The letters were signed by Bernard Thomas Ngugi Mungai, Agnes Wambui Njenga, Maria Magdalene Wanjera Mungai and Samuel Muchiri Kinuthia but not signed by Joseph Kamande Mungai, David Muiruri Mungai.

By a letter dated 4th March 2016 and filed in court on 7th March 2016, Joseph Kamande Mungai filed Protest to confirmation of grant and proposed the estate to be distributed as follows:

- a. 3 acres of the deceased's estate to be allocated to the three sons Joseph Kamande Mungai, Bernard Thomas Ngugi Mungai and David Muiruri Mungai;**
- b. 1 acre to be allocated to the widow, where she will share half of it to the two daughters Agnes Wambui Njenga and Maria Magdalene Wanjera Mungai and the remaining half for herself; and**
- c. the remaining 1 acre to go to the deceased's grandson Samuel Muchiri Kinuthia on behalf of his father Peter Mungai Kimani (deceased).**

On 26th May 2016, Joseph Kamande Mungai and David Muiruri Mungai consented to the confirmation of the grant of probate of letters of administration to Cecilia Wanjiru Mungai. They however attached their proposed mode of distribution which was as per Joseph Kamande Mungai's letter dated 4th March 2016.

HEARING

The matter was orally heard in court on 24th April 2017 where Cecilia Wanjiru Mungai (PW1), Joseph Kamande Mungai (PW2) and David Muiruri Mungai (PW3) testified in support of their respective proposed modes of distribution. PW1 widow of the deceased testified that as widow she enjoys life interest over the estate of the deceased. She proposed that the distribution of the suit properties should be as follows;

DETERMINATION

I have considered the affidavits, the oral submissions and all the evidence on record. The bone of contention is the mode of distribution of the estate of the deceased. **Section 35 of the Law of Succession Act** provides for the mode of distribution on an intestate's estate where the deceased is survived by a spouse and child or children. At subsection 1, it provides that:-

“Subject to the provisions of section 40, where an intestate has left a surviving spouse and child or children, the surviving spouse shall be entitled to: the personal and household effects of the deceased, absolutely; and a life interest in the whole residue of the net intestate estate: Provided that, if the surviving spouse is a widow, that interest shall determine upon remarriage.”

In interpreting this section, Musyoka (J) in the case of **TAU KATUNGI -V- MARGRETHE KATUNGI & ANOTHER (2014) eKLR** stated that:-

“The effect of section 35(1) is that the children of the deceased are not entitled to access the net intestate estate so long as there is a surviving spouse. The children's right to the property crystallises upon the determination of the life interest following the death of the life interest holder or her remarriage. Prior to that, the widow would be entitled to exclusive right over the net estate. This means that if the net estate is generating income she would be the person entitled exclusively to the income so generated.”

Accordingly, since the widow is still alive and has not remarried, her life interest in the property is yet to

be terminated. In the above quoted case of **TAU KATUNGI -V- MARGRETHE KATUNGI & ANOTHER (2014) eKLR**, the court in elaborating on the nature of a life interest stated thus;

"Life interest confers a limited right to the surviving spouse over the intestate estate. He or she does not enjoy absolute ownership over the property. They cannot deal with it as if it was their own. By virtue of section 37 of the Act, a surviving spouse cannot during the life interest dispose of any property subject to that life interest without the consent of all the adult children, co-trustees and the court. This is meant to safeguard the interest of the children who are the ultimate beneficiaries of the property the subject of the life interest. It is in this respect that the life interest operates as a trust over the property the subject thereof, a trust held by the surviving spouse for the benefit of the surviving children."

Therefore, Cecilia Wanjiru Mungai continues to exercise life interest but in trust for children of the deceased. However, by virtue of **Section 83 (e) (f) & (g) of Law of Succession Act** once the grant is confirmed then the administrator widow of the deceased may transfer the respective beneficial interest to the beneficiaries. The widow and administrator of the estate shall hold the two parcels of land in trust for her children who are beneficiaries of the estate of the deceased pending distribution of the estate after confirmation of grant.

DISPOSITION

1. In view of the foregoing, the summons for confirmation of the grant dated 1st December 2015 is hereby granted.

2. The widow of the deceased and administrator of the deceased's estate shall exercise life interest over the suit properties Plot Ngong/Ngong/6590 and Plot Ngong/Ngong/5021, Thereafter, the mode of distribution shall be;

3. The mode of distribution shall be as follows;

Plot Ngong/Ngong/6590 (3 acres);

- a. Joseph Kamande Mungai- 1 acre**
- b. Bernard Thomas Ngugi Mungai- 1acre**
- c. David Muiruri Mungai - 1 acre**

Plot Ngong/Ngong/5021(2 acres)

- a. Samuel Muchiri Kinuthia grandson of deceased-(son of Peter Mungai Kimani (deceased)- 1acre**
- b. Agnes Wambui Njenga 1/2 acre & Maria Magdalene Wanjera Mungai1/2 acre.**

4. Any aggrieved party is at liberty to apply

5. Each party to bear own costs.

It is hereby ordered.

DELIVERED SIGNED & DATED IN OPEN COURT IN NAIROBI ON 30TH OCTOBER, 2017.

M. W. MUIGAI

JUDGE