



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIVASHA

SUCCESSION CAUSE NO. 100 OF 2015

(Formerly Naivasha CM's Succession cause No. 198 of 2009)

IN THE MATTER OF THE ESTATE OF CHARLES

NJUGUNA MUNGAI (DECEASED)

FAITH NYAMBURA NJUGUNA.....1ST ADMINISTRATOR

PAUL MUNGAI KAHARE.....2ND ADMINISTRATOR

AND

LUCIA NJERI MBIYU.....ADMINISTRATOR/OBJECTOR

R U L I N G

1. In the ruling delivered on 3rd June, 2016 this court observed *inter alia* that:-

“6. In his letter of introduction that was used to commence the succession cause, the said Chief appears to have been more interested in proposing distribution rather than identifying possible heirs. The 11 children of the deceased were not mentioned at all, until the Objector came up with her claim. A brother of the deceased and 2nd Petitioner herein, admits in his affidavit that his deceased brother indeed was married to the deceased in 1963 but that, without divorcing her, he later took on the 1st Petitioner as a wife later and got 10 children with her. He too dwells on the question of distribution.

7. The evidence by the 2nd Petitioner in my view supports the Objector's assertion. Equally the proceedings before the chief and elders annexed to the 1st Petitioner's last affidavit tend to confirm the status of the Objector. The Objector was married to the deceased, on the evidence tendered, but it would appear she had left the home by the time the deceased married the 1st Petitioner under customary law. By dint of the definition of 'wife' in Section 3 (1) of the Law of Succession Act the Objector remained a wife to the deceased. Possibly, the fact that she could not bear children may have led to the deceased's action of taking on a second wife but he did not divorce her. Hence the marriage was still subsisting at the time of the death of the deceased.

8. The 1st Petitioner may well have believed that the decision of the elders was binding, and hence did not, in filing the subsequent succession cause include the Objector. Possibly, no fraud was intended, but it is quite surprising that none of the children of the deceased are mentioned in the papers filed with the Petition. In light of all the foregoing, I would allow the objection and order that the grant issued on 22nd March, 2010 be rectified to include the Objector as the 3rd Petitioner.”

2. Following the appointment of the Objector as a joint Administrator with the two existing Petitioners, counsel for the latter moved the court to hear the Summons for confirmation of grant filed on 16th September, 2010.

3. I note that pursuant to this court's order, a letter from the assistant chief North Kinangop, dated 21st July 2016 has been filed to confirm the identities of the children of the deceased with the 1st Petitioner, **Faith Nyambura Njuguna**. There are 11 children surviving the deceased alongside their mother **Faith Nyambura Njuguna**.

4. For her part, the Objector now 3rd Petitioner had no children with the deceased and had been separated from him long before his death. Although the deceased may have wed the 3rd Petitioner (Objector) under a monogamous system of marriage, his subsequent marriage to the

1st Petitioner was under Kikuyu Customary law and therefore potentially polygamous.

5. The notwithstanding, in the circumstances of this case, it is difficult to mechanically apply Section 40 of the Law of Succession Act in distributing the estate. For three reasons. First, the third Petitioner had no children with the deceased and seemingly cohabited with him for only a few years in the 60's. Secondly, the sole asset of the estate is a 22 acre piece of land parcel namely, **NYANDARUA/MKUNGI/1478**.

6. The 1st Petitioner already concedes that although this property was registered in the name of the deceased in 1993, some portions thereof were, following family squabbles on ownership, ceded to three members of the deceased's family. These are **Paul Mungai Kahare** 2nd Petitioner and brother to the deceased (1 acre), **Hannah Nyokabi Muhuri**, a sister to the deceased (1 acre) and **Damaris Wanjiru Wanguku**, a sister-in-law to the deceased (1.75 acres).

7. This arrangement was arrived at as a compromise in order to resolve the admitted family dispute before the deceased's death and is captured clearly in the chief's introduction letter annexed as **FNN1** to the 1st Petitioner's affidavit filed on 16th November, 2015.

8. It would seem from the annexure that other portions of land had been disposed off by the year 2009. It is not clear whether this was done by the deceased himself. Whatever the case, and that is my third reason, for not applying Section 40 of the Law of Succession Act mechanically, only 12 acres remain for distribution between the two widows and the deceased's 11 children.

9. The suggestion that the 3rd Petitioner/Objector should be allocated 4 acres of the remaining 12, while the 1st Petitioner and her children share the balance is therefore to my mind inequitable and unacceptable. All circumstances considered, I think it would be just and equitable in this case to allot 1 acre to the 3rd Petitioner/Objector.

10. The balance of 11 acres will be shared equally between the 1st Petitioner and her 11 children, as follows. The children are:

1. Faith Njuguna	-	Widow	-	0.9166 Acres
Nyambura				
2. Joseph Mungai	-	Son	-	0.9166 Acres
3. Alice Njoki	-	Daughter	-	0.9166 Acres
4. Jane Wanjiku	-	Daughter	-	0.9166 Acres
5. Catherine Njeri	-	Daughter	-	0.9166 Acres
6. Judy Wanjiru	-	Daughter	-	0.9166 Acres
7. Mary Mumbi	-	Daughter	-	0.9166 Acres
8. Sarah Mugure	-	Daughter	-	0.9166 Acres
9. Joyce Wangui	-	Daughter	-	0.9166 Acres
10. Naomi Waithira	-	Daughter	-	0.9166 Acres
11. Agnes Njeri	-	Daughter	-	0.9166 Acres
12. Lucy Wairima	-	Daughter	-	0.9166 Acres

11. With regard to the stated 2nd Petitioner brother, sister and sister-in-law to the deceased, they will receive their share as stated in the 1st Petitioner's affidavit in support of the Summons for confirmation of grant filed on 16th September, 2010. (1 acre, 1 acre and 1.75 acres respectively).

12. The said affidavit also lists several purchasers of portion of the subject land parcel. This court does not have enough material upon which to decide whether or not the listed purchasers **Joseph Njuguna Kiarie** (2 acres), **Dishon Kanyi Jawega** (1/4 acre), **Stephen Wachira Kuria** (2 acres), **Wanyoike Gathigi** (1.2 acres) and **Christine Nkini Striker** (1 acre), transacted directly with the deceased. Of course, any transaction of sale of any asset of the deceased's estate that was done after the death and before confirmation of the grant herein is null and void.

13. The total acreage of the parcels of land allegedly already sold is 6.45 acres. This lot will be separately assigned to the 1st Petitioner and it will be upon the alleged purchasers to perfect their purported transactions with the said Petitioner, who has however acknowledged them.

14. Each party will bear own costs.

Delivered and signed at Naivasha this **24th** day of **October, 2017**.

In the presence of:-

Mr. Waigwa Ngunjiri for the Objector/3rd Administrator

Mr. G. N. Kimani for the 1st and 2nd Administrators

Court Assistant – Barasa

C. MEOLI

JUDGE