



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NYERI
SUCCESSION CAUSE NO. 65 OF 1996
IN THE MATTER OF THE ESTATE OF MUNYORO WAWERU (DECEASED)
GLADYS WANGARI MUNYORO
LYDIAH NYARUAI MUNYORO
MARGARET WANGECHI MUNYORO.....PETITIONERS
VS
CECILIA NJERI MUNYORO AND OTHERS.....RESPONDENTS
JUDGMENT

Munyoro Waweru Githigo died on the 28th February 1990 at the age of 77 years as per the certificate of death dated 5th October 1995. In his life he had four wives and 32 children namely;

1. Wanjiru Munyoro (Deceased)

- i. Jane Wangechi,
- ii. Francis Karuru,
- iii. Lydia Nyaruai,
- iv. Duncan Ndururi,
- v. Catherine Gatheru,
- vi. Elizabeth Mutundu,
- vii. Grace Mwhaki

2. Gladys Wangari Munyoro

- i. Margaret Wangechi,
- ii. Francis Waweru,

- iii. Stephen Huria,
- iv. John Mathai,
- v. Beatrice Wambui,
- vi. Jane Mutundu,
- vii. David Maina,
- viii. Joseph Macharia

3. Margaret Wangechi Munyoro

- i. Nancy Wanjiru,
- ii. Peter Karuru,
- iii. Grace Nyaruai,
- iv. Christopher Mwangi,
- v. Elizabeth Mutundu,
- vi., Peter Maina,
- vii. Joseph Huria,
- viii. Jane Wanjiku
- ix. Joel Rukwaro

4. Cecilia Njeri Munyoro

- i. Joseph Murage,
- ii. Margaret Wangechi,
- iii. Simon Gitonga,
- iv. David Maina,
- v. Beatrice Wambui,
- vi. Grace Mwhaki,
- vii. Stephen Huria,
- viii. Jane Muthoni

He had one property NYERI/ENDARASHA/422 measuring 11.3 HA which he subdivided into two portions NYERI/ENDARASHA/616 and NYERI/ENDARASHA/617. No. 422 was closed on the 22nd October 1980.

It is not in dispute that he sold off title number NYERI/ENDARASHA/616.

His wife Gladys Wangari Munyoro was registered as the proprietor of LR NYERI/ENDARASHA/390 measuring 5.5HA on 18/5/87 but title was issued on the 4/1/1993.

On 25th September 1985 NYERI/ENDARASHA/617 was subdivided into three portions NYERI/ENDARASHA/891 (1.6HA),

NYERI/ENDARASHA/892 (2.43HA),

NYERI/ENDARASHA/893 (4.25HA).

The cause was filed with a view to determining the beneficiaries and their entitlements to the parcels of land NYERI/ENDARASHA/891,892 and 893.

Grant of letters of administration intestate was made on the 18th October 1996 to Gladys Wangari Munyoro, Margaret Wangari Munyoro and Lydia Nyaruai Munyoro.

The matter was referred to arbitration before the D.O Mweiga on the 9th October 1998.

On the 24th June 1999, an award was filed to the effect that the three parcels registered in the names of the deceased be shared equally among the three houses, and Gladys to retain the parcel she had acquired in the lifetime of the deceased.

The Petitioners filed summons to confirm the grant as per the award vide their affidavit of 22nd February 2012. However, it never saw the light of day as it was not signed by the chief, the elders or the parties. In addition, an affidavit of protest was filed on the 31st of October 2013 by John Murage Munyoro a son of Cecilia Njeri Munyoro. He averred that he represented the house of his mother. That the summons for confirmation of grant left out an important beneficiary by the name Asaph Wamugunda who had assisted the family with finances to secure the estate, that there had been an award by the Mweiga Land Disputes Tribunal no 30 of 2004, that the deceased's wishes were ignored and that the proposed distribution was unjust and inequitable.

The protest was heard by way of oral evidence.

According to the protester the deceased subdivided his land in 1980.

That no. 390 was transferred to the 2nd wife before he died and she lived there with her family till she died.

That the deceased lived on no. 893 with the three wives but at some point settled them as follows; Wanjiru 1st wife through her children Duncan Ndururi and Lydia Nyaruai on no. 892 measuring 6 acres. Margaret Wangechi the 3rd wife had left home after a disagreement with her husband and her portion was given to her son Peter Karuru who settled on no. 891 measuring 4.5 acres. That it is him who brought her back after her husband died, and Cecilia Njeri 4th wife on no. 893 measuring 10acres for the reason that she is the one who had had taken care of the deceased until he died and was buried there.

The protester further testified that Asaph Wamugunda had become involved with the estate after he settled the loans which the deceased had taken using titles no. 891 and 892 as security. That it was his mother Cecilia who had decided that the said Asaph Wamugunda be given 1.5 acres of land out of parcel no. 893 but that the other three houses had agreed to the same. He said that the said Wamugunda assisted them to get money for survey. He proposed that the 8.5 acres remaining in no.893 be shared among the 8 children of the said Cecilia Njeri.

On cross examination he told the court that the whole family first lived on no.390, then they shifted to no. 617 leaving Gladys on no. 390, and after the subdivision of no. 617, each house moved to its share and

the surveyors were called to confirm the boundaries. He said that it was the wish of the deceased that the three portions be of different sizes. That the outcome of the dispute before the District Officer was that Cecilia would get 7 acres, Duncan and Lydia 6.5 acres, Peter Karuru 3.5 acres and Margaret Wangechi 3 acres and Margaret 6.5 acres.

On re-examination he told the court that after the movement of the family to 617, and after its subdivision, the deceased did not show each wife where to live. They only learnt about his wishes after he had died.

Asaph Wamugunda testified that the deceased had two parcels of land used to lease one no. 390 to him. However, he registered this in the name of one of his wives, Gladys Wangari. He subdivided the other, no.617, into four portions and sold him Nyeri/Endarasha/894.

After the death of the deceased he said he cleared a debt of Ksh 60, 000 and the family signed a consent to give him 1.5 acres of land from no. 893 which was close to the no.894 the deceased had sold to him. He produced a document which he said was the consent the family had signed to sell him the 1.5 acres of land. He testified that Cecilia and her husband were buried in no.893. That other three parcels were to be held by the other families as testified by the protester.

Margaret Wangechi Munyoro testified for the petitioners. She told the court that what she knew was that the land was in her husband's names and it belonged to his four wives. According to her no land was given to Gladys and the land that was in her son's name was his own, given as compensation by his employer after suffering an injury to his hand while at work.

In cross examination she conceded that she had been separated with her husband but she never got married elsewhere. She said that her husband sent for her. That she attended his burial. She denied that her husband had subdivided his land before he died.

The other witness for the petitioners was Francis Waweru Munyoro. He challenged PW2 Asaph Wamugunda saying that he was not a member of the Munyoro family, and that he had not produced any documents to support his claims. He testified that Gladys had been given land by the government, that his father never subdivided his land before he died.

In cross examination she said that when his mother got the land she was married to his father, the deceased. He denied any knowledge of any meeting where the family agreed to give Asaph any land. Shown the alleged consent form he denied signing it contended that his ID number had been obtained from records in the chief's office

He confirmed that although his step mother Margaret had separated with his father, the two reconciled before his death.

The protester was represented by Kebuka Wachira. The petitioner appeared in person.

Each party filed written submissions.

The protester's position is that deceased had, even without a will, demonstrated his plans on how he intended to distribute his three parcels of land nos.891,892 and 893.

The petitioner on her part relied on s. 40 of the Law of Succession Act.

I have carefully considered the evidence and the submissions before me.

There are only two issues to be determined.

1. Whether the deceased distributed his estate before he died?

2. Whether Asaph Wamugunda is entitled to any share of the deceased's estate.

It is not in dispute that the deceased died intestate. There was no evidence of any will whether oral or otherwise.

It is also not in dispute that the only parcel of land that was registered in any of the wives' names was no.390 in the name of Gladys Wangari. There was no evidence that it was indeed the deceased who had transferred the parcel to her. That her name was entered in the register during life of the deceased is not disputed hence her share of the property is not available for distribution.

On the contrary the deceased subdivided his parcel of land and registered the new parcels in his name. If he had wanted to share them out specifically there would not have been an easier thing to do. However, he never did that and there is no evidence that was placed before the court to demonstrate that he had shown any specific intention on how he intended to share out nos.891, 892 and 893.

The protester and his witness testified that a survey was done twice to demarcate the land according to the wishes of the deceased. Not a single sketch was provided to prove this and in any event if the family had agreed to the survey and the distribution suggested by the protester, then, there would be no dispute before the court.

The evidence before me is that before the subdivision the three families lived on no.617, and even after the subdivision of the title no.617 into three the whole family still continued to live on what was no.893 on the ground. DW2 Francis Waweru whose mother was the registered proprietor of no.390 confirmed this. That nos. 891,892 and 893 were just one big shamba and the three families occupied the whole of it, and that they had constructed on all these parcels of land. That each house had occupied a certain portion of the land. But even then according to PW1 this was not with the direction of the deceased. The family only came to know that the land had been subdivided into three portions with three separate titles after the deceased had died.

Hence it is clear to me that there is no evidence that the deceased had specifically shared out his parcels of land to the three wives before he died.

On the second issue, Asaph Wamugunda relied on a document headed 'CONSENT' dated 17th January 1992. It states

“We the undermentioned (Munyoro Family Members) have on this 17th Day of January 1992 given Mr. AZAPH WAMUGUNDA KAIRU our blessings of deploying the survey of Kenya in subdividing our late husbands (sic) shamba NYERI/ENDARASHA/891, 892 and 893 into five portions as shown hereunder-

- 1. AZAPH WAMUGUNDA.....1.5 acres***
- 2. GLADYS WANGARI MUNYORORO1.0acre***
- 3. CECILIA NJERI MUNYORORO.....***
- 4. PETER KARURU MUNYORORO.....***
- 5. DUNCAN NDURURI/LYDIA MUNYORORO.....***

When looking for the surveyor, Mr. Wamugunda will be accompanied by Duncan Ndururi, Peter Karuru, Francis Waweru, and John Murage, all sons of the deceased. Mr. A. Wamugunda was asked to pay the survey fees on behalf of the four houses.

This consent has been signed by-

1. **Duncan Ndururi.....ID NO. only**
 2. **Stephen Huria.....**
 3. **Peter Karuru.....ID NO and signed**
 4. **Francis Waweru.....ID NO only**
 5. **John Murage.....ID NO and signed**
 6. **Christopher Mwangi.....signed no ID NO.**
 7. **Lydia Nyaruai.....ID NO. only**
 8. **Gladys Wangari.....ID NO and thumb print**
 9. **Cecilia Njeri.....**
 10. **Huria Kagoko.....ID NO. only**
 11. **Asaph Wamugunda.....ID NO and signed**
-in my presence..... (Stamp and signature, Chief, Endarasha Location)”**

Let us look at this so called consent.

1. It suggests that the parcels no.891,892 and 893 are one large parcel of land, on the ground which could be subdivided into 5 portions, and not three distinct parcels of land, hence the need for surveyors not only to hive off the 2.5 acres as indicated but to share out the remainder to the persons listed.
2. It refers to ‘our husband’s land’ hence its purport is that it is the wives of the deceased who gave Azaph their blessing, yet only one supplied her thumbprint.
3. It is not signed by all the family members. It actually corroborates the testimony of DW2 that there was no family meeting where he was present to discuss the alleged consent. This applies to the others whose presence is indicated by ID no only and no signatures.
4. It speaks of subdivision of the three parcels of land into 5 portions and identifies only two portions, for Azaph, 1.5 acres and for Gladys Wangari 1.0 acres. If it was a family consent, then it would specify the portions for the other family members.
5. It does not state where these pieces would be hived from i.e. whether from no.891,892 or 893 or why Gladys would be getting only one acre.
6. It speaks of Azaph assisting with the survey and paying the survey fees. It does not say how much that would be. There is no mention of his clearing any bank loans on behalf of the deceased and that he would get 1.5 acres for his act of kindness.

Finally, Azaph Wamugunda and the protester produced no single document to prove that he settled any bank loans on behalf of the deceased. He also did not produce any evidence that he brought in any surveyor, his name, when and at what cost to warrant his entitlement to any portion of the deceased’s estate and contrary to his submissions he did not at any time acquire the status of a purchaser from the deceased.

I find therefor that there was no family consent to transfer 1.5 acres of land from the estate to Asaph

Wamugunda.

Having found so I make the following determination.

The deceased was polygamous. He had one parcel of land LR no. Nyeri/Endarasha/422 which he subdivided into two parcels nos. 616 and 617. He sold the 616 to Azaph Wamugunda. There was no consent to transfer any other land to him. The deceased remained with no.617 which he subdivided on paper into three portions nos.891,892 and 893 each of a different size. He did not share out **his** land to his wives and had not pointed out who would occupy which portion. His family continued to occupy the land only becoming aware of these subdivisions after his death.

Taking into consideration the fact that each house had the same number of children, and the provisions of section 40 of the Law of Succession Act, I make the following final orders.

1. That estate of Munyoro Waweru comprising of the parcels no NYERI/ENDARASHA/891,892 and 893 be share equally among the four houses of Wanjiru Munyoro, Margaret Wangechi Munyoro, Gladys Wangari Munyoro and Cecilia Njeri Munyoro. The grant be confirmed accordingly.
2. The land parcel Nyeri/Endarasha/390 in the name of Gladys Wangari Munyoro is not part of the deceased estate and hence not available for distribution.
3. The protest is dismissed
4. There are no orders as to costs.

Dated, delivered and signed this 23rd day of October 2017

Teresia Matheka

Judge

In the presence of

Court Assistant Harriet

Mr. Kebuka Wachira for protester

Applicant in Person Margaret Wangechi