



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

FAMILY DIVISION

SUCCESSION CAUSE NO. 1751 OF 1993

IN THE MATTER OF THE ESTATE OF JAMES CHEGE NDWARU (DECEASED)

MARY WACHUKA CHEGE.....APPLICANT

VERSUS

SUSAN NJOKI CHEGE.....1ST RESPONDENT

JAMES WAINAINA CHEGE.....2ND RESPONDENT/ADMINISTRATOR

JANE WANJIRU CHEGE.....3RD RESPONDENT/ADMINISTRATOR

ELIZABETH WANJIKU CHEGE.....4TH RESPONDENT

REGINA GATHONI.....5TH RESPONDENT

GEORGE MBUGUA CHEGE.....6TH RESPONDENT/ADMINISTRATOR

ESTHER RUGURU CHEGE.....7TH RESPONDENT

JUDGMENT

1. The deceased James Chege Ndwaru died intestate on 25th June 1981 at the Aga Khan Hospital. He left a widow Jemimah Wambui Chege who petitioned the court for the grant of letters of administration intestate. The grant was issued to her on 2nd February 1994. It was confirmed and certificate issued on 26th May 1994. She passed away on 7th February 1996 before she had distributed the estate of the deceased. The estate, as shown in the certificate of confirmation, comprised the following property: -

- (a) Dagoretti/Riruta/9;
- (b) Dagoretti/Riruta/548;
- (c) Dagoretti/Riruta/547;
- (d) Dagoretti/Riruta/528;

(e) Dagoretti/Riruta/510; and

(f) Dagoretti/Riruta/35;

2. The deceased's children (beneficiaries) were John Ndwaru Chege, Salome Wanjiku Chege, Mary Wachuka Chege (1st administrator/applicant), Susan Njoki Chege (1st respondent), James Wainaina Chege (2nd administrator/2nd respondent), Jane Wanjiru Chege (2nd administrator/3rd respondent, Elizabeth Wanjiku Chege (4th respondent), David Munguratu Chege (deceased), George Mbugua Chege (4th administrator/6th respondent), Esther Ruguru Chege (7th respondent) and Regina Gathoni (5th respondent). Following the death of Jemimah Wambui Chege, Mary Wachuka Chege, Jane Wanjiru Chege, Jame Wainaina Chege and George Mbugua Chege were appointed as the joint administrators of the estate.

3. It is the distribution of the estate of the deceased that is the subject of this decision. The parties filed respective affidavits proposing how they wanted the estate to be distributed. Their counsel filed written submissions.

4. Section 38 of the Law of Succession Act (Cap.160) provides that where a deceased has left surviving children, and no spouse, the net estate shall be divided equally among the surviving children. In her affidavit proposing the mode of distribution, the applicant sought equal sharing. She suggested that, if that equal sharing of the parcels of land was not possible, then the entire estate be sold so that the children can equally share in the proceeds. The 1st, 2nd and 3rd respondents and Salome Wanjiku Chege stated that their late mother (the deceased's widow) had expressed her wish on how she wanted the estate to be shared. The wishes are contained in proposal that they made to the court.

5. It has to be appreciated that the estate to be shared belonged to the deceased, and when, at confirmation, it passed to the widow this was to hold in trust for the benefit of all the beneficiaries. The wishes that may influence the distribution would be those of the deceased, not the widow. Now that the deceased did not express any wishes, the estate shall be distributed equally to all the beneficiaries.

6. There were other properties, beyond what was indicated in the affidavit sworn to support the petition for the grant of letters of administration intestate, that are indicated in the pleadings. These were Dagoretti/Riruta/T.20; Dagoretti/Riruta/T.285; Dagoretti/ Riruta/T.36; Dagoretti/Riruta/464 and Dagoretti/ Riruta/731. The parties agreed that all these properties, except for Dagoretti/Riruta/T.285 and Dagoretti/Riruta//731, do form part of the estate of the deceased, and are therefore available for distribution. The applicant stated that both Dagoretti/Riruta/T.285 and Dagoretti/Riruta/731 belonged to the deceased. However, the 1st, 2nd and 3rd respondents swore that these properties did not belong to the deceased, and that, in fact, the alleged ownership is subject to challenge in pending proceedings (ELC No. 429 of 2013). It does appear from the affidavits that the two properties are in the names of John Ndwaru Chege (son of the deceased), but, according to these respondents, the registration was for him to hold in trust for the rest of the family. This is what the suit seeks to determine. Until the suit is determined, I find that the two properties will not form part of the free estate to be distributed to the parties.

7. Both the applicant and the respondents were in agreement that Dagoretti/Riruta/9 be shared equally to all the children of the deceased, and that the share of Regina Gathoni (6th respondent) be registered in her name to hold in trust for herself and her children. It is so ordered.

8. Equally, parcels Dagoretti/Riruta/510, Dagoretti/Riruta/35, Dagoretti/Riruta/528, Dagoretti/Riruta/547 and Dagoretti/Riruta/54 shall each be equally shared among the children of the deceased. Similarly, Dagoretti/Riruta/T.20, Dagoretti/Riruta/T.232, Dagoretti/ Riruta/T.36 and Dagoretti/Riruta/T.464 shall each be divided equally among the children of the deceased.

9. In reaching this decision, I have borne in mind that it was not clear what the values of the respective parcels of land were, who lives on which parcel(s) of land, what developments have been undertaken by who, and for how long. If any parcel is too small to be economically shared equally, it should be

registered in the joint names of the administrators in trust for all the beneficiaries in equal shares.

10. Costs of the subdivisions shall be equally borne by the beneficiaries.

DATED and DELIVERED at NAIROBI this 23RD day of OCTOBER 2017

A. O. MUCHELULE

JUDGE