

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO. 136 OF 2015

IN THE MATTER OF THE ESTATE OF HOSEA WANDAU

KIANIA ALIAS H. WANDAU KIANIA (DECEASED)

RULING

1. Hosea Wandau Kiania alias H. Wandau Kiania died on the 7th July 1976. He died intestate and left the following surviving him; Priscilla Mwara Kimani(daughter) , James Muthama (son), Monica Wairimu Ngugi (daughter) , Mary Wanjiru Mbugua (daughter), Nderitto Muruwa Gitau (son), Esther Gathoni Gichimu (daughter) and Rahab Waruguru Kiania(daughter in law).

2. On the 26th of April 2016 a grant of letters of administration was issued to Priscilla Mwara Kimani, James Muthama Hosea, Esther Gathoni and Nderitto Muruwa Gitau. On the 29th of September 2016 a summons to confirm the grant was filed by Priscilla Mwara Kimani, James Muthama Hosea and Esther Gathoni. Nderitto Muruwa Gitau filed an affidavit of protest on the 21st of November 2016.

3. The issue is the mode of distribution. The 3 administrators Priscilla, James and Esther have proposed that they all share title number Ndumberi/ Tinganga A/ 799 measuring 2.9 acres equally. That title no. Ndumberi/ Tinganga/T.20 measuring 0.2 acres (valued at 3.5 million) to go to Esther Gathoni Gicimu in exchange to refund the other 6 beneficiaries Kshs. 500,000/-, this after 5 out the 7 beneficiaries agreed that since title number Ndumberi/Tinganga/20 measures 100x100ft it was uneconomical for it to be subdivided into 7 portions.

4. Nderitto Gitau depones that the administrators have been intermeddling with the estate of the deceased. That his father's estate should not be divided into the way that is proposed and that no beneficiaries should buy the others. His proposal is that his two married sisters Priscilla Kimani and Monica Ngugi should inherit parcel no. L.R. Ndumberi/ Tinganga A. T20 measuring 0.20 of an acre whose value is Kshs.6 million and that parcel land L.R Ndumberi/ Tinganga A/ 799 should be shared equally between Rahab Waruguru Gitau, James Muthama Hosea, Mary Wanjiru Wandau, Esther Gathoni Gichimu and Nderito Muruwa Gitau. Nderitto depones that though the beneficiaries have not agreed on mode of distribution and the location of each beneficiaries share and portion Esther Gathoni and Mary Wanjiru are in the process of intermeddling with the estate by putting up buildings close to his almost blocking his access to the road and that where his house is located is where his father showed him where he lives. In response the 3 administrators filed a supplementary affidavit and depone that the majority of them are in agreement over the mode of distribution and that the Law of Succession and the Constitution of Kenya 2010 does not discriminate between married unmarried and married children of the deceased. That the proposed mode of distribution will ensure smooth administration of the 2 assets of the estate. That each respective parcel of each beneficiary will be surveyed and demarcated after the confirmation of the grant.

5. Nderitto Gitau filed an application dated the 15/5/2015 seeking and order that the respondents their agents and/or servants be restrained from putting up buildings on the deceased's property known as L.R. Ndumberi/Tinganga/799 till these succession proceedings are heard determined and shares of the beneficiaries are ascertained.

6. Parties filed written submissions. The applicants maintained their mode of distribution and relied on Sections 71(3),29 of the Law of Succession Act and Article 27 of the Constitution of Kenya 2010. On the applicant's application dated the 15/5/2015 seeking injunctive orders it was submitted Mary Wanjiru and Joseph Hosea have been in the land since 1976 and have merely graduated their mud house to more

permanent stone houses within their respective portions and the applicant has been insulting them to discourage them from doing so. That the applicant never married but has since December 1999 lived in the family house and they have not had an issue with him. Nderritto Muruwa Gitau in his submissions gave a background of the family meetings prior to the succession being filed. He maintained that his siblings are still intermeddling with the property adding that he has never stated that his sisters are not entitled to inherit. He has asked the court to distribute the property as stated in his affidavit and that his portion be where his house is situated. Rahab Waruguru Gitau in her submissions states that her two divorced sisters – in-law Esther Gathoni and Mary Wanjiru have brought down her house and put up buildings on the site despite warning by the chief. According to her no beneficiaries should buy out others and that Priscilla Mwara Kimani and Monica Wairimu Ngugi take L.R. No. Ndumberi/Ting'ang'a/T20 whose current value is 6,000,000/- and that L.R. Ndumberi/Ting'ang'a/799 be shared equally amongst Rahab Waruguru Gitau, James Muthama Hoseah, Mary Wanjiru Wandau, Nderitto Muruwa Gitau and Esther Gathoni Gicimu. She requested that whilst sharing the land the court should order that her portion be where her house was when the parents were alive.

Determination

7. I have considered the affidavits and submissions, the issue for determination is the mode of distribution. The applicant and respondents are the beneficiaries of the deceased's estate. From the affidavits the beneficiaries are not in agreement on how the two properties should be shared. According to the respondents L.R. No. Numberi/Ting'ang'a/799 measuring 2.7 acres should be shared equally and L.R. No. Ndumberi/Ting'ang'a/T.20 measuring 0.20 acres should be inherited by Esther upon her paying the 6 beneficiaries a sum of 500,000/- each. Nderitu the applicant and one Rehab Gitau propose that parcel no. 799 should be shared amongst the five beneficiaries namely Rahab Waruguru Gitau, James Muthama Hosea, Mary Wanjiru Wandau, Esther Gathoni Gicimu and Nderittu Muruwa Gitau. The applicants have submitted that Esther Gathoni Gicimu should be given parcel No.T.20 which measures 0.20 acres because it is uneconomical to subdivide into 7 portions. I agree that it is uneconomical to subdivide Parcel No. T.20 a plot of 100x100 ft into 7 portions. I note that there is no other explanation given on why Esther is to purchase the said portion. The applicants claim the portion is worth Kshs.6million and the respondents' state it is worth Kshs.3.5million. I note that none of the parties produced a valuation report on the value of the said land. If Esther Gathoni is to inherit the said portion then it is only in order that she compensates the other beneficiaries a sum that is reasonable and hence in my view a valuation should be done on the said parcel of land so that the parties know of its exact value. After the said valuation they can then agree on the amount that Esther Gathoni Gicimu should refund each beneficiary. Section 38 of the Law of Succession Act provides that; *"where an intestate has left a surviving child or children but no spouse, the net intestate estate shall, subject to the provisions of section 41 and 42, devolve upon the surviving child, if there be only one, or shall be equally divided among the surviving children"*. Therefore L R. Ndumberi/Ting'ang'a/799 shall be shared amongst the 7 beneficiaries namely; Priscilla Mwara Kimani, James Muthama Hosea, Monica Wairimu Ngugi, Mary Wanjiru Wandau, Esther Gathoni Gicimu, Rahab Waruguru Gitau and Nderitto Muruwa Gitau. L.R. No. Ndumberi/Ting'ang'a /T. 20 shall go to Esther Gathoni Gicimu who will refund the other 6 beneficiaries the value of the said property. The property shall be valued so that the parties know its current value and thereafter the parties shall agree on the sum to be paid to the beneficiaries. In the event they do not agree after valuation then the said property shall be inherited by the two sisters who are married namely; Priscilla Mwara Kimani and Monica Wairimu Ngugi and parcel No. Ndumberi/Ting'ang'a/799 shall be divided equally amongst the other five beneficiaries. The applicants' application to issue the injunctive order is declined as he has failed to establish the intermeddling as alleged. He merely attached letter from a chief and no further evidence on the alleged intermeddling. The respondents explained that they have been upgrading their homes. There shall be no orders to costs. It is so ordered.

Dated, signed and delivered this 22nd day of **November 2017**

R. E. OUGO

JUDGE

In the presence of:

Mr. Nderitto Muruwa Gitau in person Applicant

Mr. Kithinji h/b for Mr. Njengo For the Respondent

Ms. Charity Court clerk