



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

FAMILY DIVISION

SUCCESSION CAUSE 1857 OF 2012

IN THE ESTATE OF MARGARET WANJIRU NJOROGE (DECEASED)

**HUMPHREY GITAU NJOROGE.....APPLICANT /CO
ADMINISTRATOR**

**FRANCIS BORO NJOROGE.....RESPONDENT/CO-
ADMINISTRATOR**

**NORBERT WAITHARI NJOROGE.....
BENEFICIARY**

**CATHRINE NJAMBI NJOROGE.....
BENEFICIARY**

DIANA WANJIRU MUNGAI (JOHN NJUGUNA NJOROGE-DECEASED) BENEFICIARY

RULING

PLEADINGS

The deceased died on 31st October 2008. The beneficiaries Francis Boro Njoroge, Humphrey Gitau Njoroge and Nobert Waithari Njoroge filed petition for letters of administration on 15th August 2012. Catherine Njoroge who resides in UK did not give consent despite contact through email. Later, she claimed she wanted to file a protest. She did not do so and she went silent on the matter. The Court issued a grant on 24th October 2013.

On 22nd June 2015, the administrators Francis Boro Njoroge and Humphrey Gitau Njoroge filed summons for confirmation of grant of the one issued on 24th October 2013.

The Summons outlined the beneficiaries as follows;

- a. Francis Boro Njoroge
- b. Humphrey Gitau Njoroge
- c. Nobert Waithari Njoroge
- d. Cathrine Njambi Njoroge
- e. Diana Wanjiru Mungai (daughter to the late John Njuguna Njoroge deceased)

The assets were outlined as follows;

- a. Kiambu/ Town Block 1/43
- b. Kiambu /Town Block 1/35
- c. L.R. 209/8675 Nairobi
- d. L.R. 4894/44 Nairobi

The proposed mode of distribution is as follows;

- a. Kiambu/ Town Block 1/43} to be sold and proceeds shared equally
- b. Kiambu /Town Block 1/35} to be sold and proceeds shared equally
- c. L.R. 209/8675 Nairobi} to be sold and proceeds shared equally
- d. L.R. 4894/44 Nairobi} to be subdivided and shared equally

Humphrey Njoroge swore the supporting affidavit to summons for confirmation of grant application and stated as follows;

Before 2010, the Humphrey and Norbert resided on the property L.R. 4894/55 which is situated in Garden estate on 5 acre property. Francis Boro Njoroge who lived in Britain returned and violently evicted them from the said property. The assault was reported to Kasarani Police Station. They have had to look for alternative rented premises. Humphrey pays rent at Ksh. 13,000/- a month. Norbert's residence is not known. They have been denied access to the property and it is guarded by security. Part of the property is leased to Assemblies of Faith ministry and Mazerus Hardware. The said Francis lives alone on the property and does not account to the other beneficiaries on rent paid.

Since letters of administration were issued, the family members have never met to discuss or agree on the distribution of the estate or way forward.

Despite several letters to other beneficiaries, they have not responded. Therefore the 2nd administrator seeks from Court the confirmation of grant as per the proposal or as the Court may amend or vary for the benefit of all beneficiaries.

Francis Boro Mungai Njoroge filed a Replying affidavit on 16th July 2015 that he opposes the confirmation of grant as Co administrator he was not consulted and the other beneficiaries were not informed and or their consent obtained.

He is opposed to Humphrey's application as he colluded with Mr. David Njonjo Waiharo proprietor of Middle East Africa Auto Spares Ltd to defraud the estate of the property L.R.209/8675 as documents cannot be traced. Humphrey has on several occasions sworn affidavits in support of Middle East Africa Auto Spares Ltd in **HCCC 406 of 2011** and **Business Premises Tribunal 552 of 2014**.

He stated that while he was in UK Humphrey of sold livestock; goats, cows, pigs and felled trees from the deceased's estate and sold them. He accused Humphrey of disposing of motor vehicles Registration KQH 290 & KPX 607 and did not account for the proceeds to other beneficiaries. He neglected to pay land rent and rates over properties that comprise of the deceased's estate.

Francis Boro Mungai Njoroge filed a further affidavit on 16th October 2015 and sought from Court that the grant is revoked and Humphrey Njoroge is removed as his Co-administrator as he has not acted diligently in the administration of the estate, he colluded with 3rd parties to defraud other beneficiaries of the estate, he has plundered the estate. He is uncooperative in administration of the estate. He is an alcoholic and totally unable to administer the estate.

Humphrey filed a Replying Affidavit on 26th October 2015 and stated that he is not an alcoholic as alleged; he has not plundered the deceased's estate. The vehicles are accounted for; the deceased left motor vehicle KQH 290 in a garage. The other car KPX 607 is at the Garden estate residence where the

Respondent resides.

He applied summons for confirmation of grant on 26th June 2015, as he is desirous to complete the distribution of the deceased's estate to all beneficiaries. Francis Boro Njoroge resides on L.R. 4894/44 Garden Estate after he forcefully evicted him and his brother Norbert from their parents' home and now resides there alone. He sublet to tenants and collects rent and he does not account to other beneficiaries.

L.R. 209/8975 Industrial areas is leased to Middle East Africa Auto Spares Ltd who sublet to sub tenants and he collects rent and distributes to all beneficiaries equally.

Kiambu Town Block 1/135 & 43 has an agent collects rent and distributes to all beneficiaries equally.

Francos Boro Njoroge is not interested in distribution of the estate, as he did not file an alternative proposal of distribution of the deceased's estate. The other beneficiary Cathrine Njambi Njoroge resides in London, she cannot be appointed administrator of the deceased's estate.

The application for revocation of grant lacks merit and it ought to be dismissed.

The Applicant filed written submissions on 23rd November 2015 and the Respondent filed written submissions on 24th November 2015 and they both reiterated the contents of their respective applications.

Nobert Wathare Njoroge informed this Court vide undated letter filed in Court that he had a house with 4 shops on ½ acre piece of the land in Garden Estate. Francis Boro Njoroge took over the land and house and denied him rent of Ksh.37, 500/- a month. Their parents' home fetches rent and each sibling receives Ksh. 11,000/- which he has been denied. Humphrey took over the running of the property in Industrial area and has the title to the property. The rent from the property is paid to all siblings.

There are properties that have not been included in the list of assets; these are;

- i. Land opposite Kamiti prison,
- ii. Their father's land in Githunguri and
- iii. Their mother's land in Kangoe which have not been traced and included in the deceased's estate.

ISSUES

1. Should summons for confirmation of grant issued on 24th October 2013 be allowed and grant confirmed or;
2. Should the grant issued on 24th October 2013 be revoked and the administrator(s) removed?

ANALYSIS & DETERMINATION

On the outset, the Court noted the sibling rivalry and administrators' disagreement. The Court summoned the parties on 19th January 2016 with a view to explore the siblings cooperation in the process of administration of the estate failure to which the Court would appoint the Public Trustee to take over as administrator of the estate.

The law of succession is as follows with regard to this matter;

Section 71 of Law of Succession Act prescribes;

“Provided in cases of intestacy, the grant of letters of administration shall not be confirmed until the court is satisfied as to the respective identities and shares of all persons beneficially entitled; and when confirmed the grant shall specify all such persons and their respective

shares.’’

From the various affidavits filed, this Court is not satisfied that the properties that comprise of the estate of the deceased have been properly identified and apportioned and the summons for confirmation of grant filed on 22nd June 2015 does not have written consents of all beneficiaries on the proposed mode of distribution. See **IN THE MATTER OF THE ESTATE OF KAHURI KIMANI (DECEASED) NAIROBI SUCCESSION CAUSE 358 OF 1996** where all beneficiaries do not consent to mode of distribution the Court shall hear and determine the dispute.

The Court has noted acrimony and hostility amongst siblings and administrators and withholding of properties and or revenue from properties by siblings against each other. The confirmation of grant issued on 24rd October 2013 is not allowed and not granted until parties comply with the law.

The 2nd issue is with regard to the application filed on 16th October 2015 by Francis Boro Njoroge on revocation of grant issued on 24th October 2013 against his co administrator Humphrey Gitau Njoroge.

The Court relies on **Section 76(e) of the Law of Succession Act**; due to the wrangles between the administrators the grant has become useless and inoperative. If the grant is revoked it is to withdraw the Applicant and his brother from acting as administrators and appoint other administrators from the siblings. Unfortunately, Norbert Waithari Njoroge is sick and Cathrine Njambi Njoroge resides in UK and cannot administer the estate of the deceased from that far.

The only alternative is to allow the administrators one more opportunity to administer the estate collectively for the benefit of all beneficiaries' failure to which the Court shall transfer the administration of the estate to the Public Trustee. Therefore the grant of 24th October, 2013 remains in force pending further orders of the Court shall hear and determine the dispute.

COURT ORDERS

The Court having considered, the pleadings and submissions filed orders as follows;

1. **The summons for confirmation filed on 22nd June 2015 is denied until all the beneficiaries agree and consent to the proposed mode of distribution.**
2. **The application for revocation of grant issued on 24th October 2013 is not granted.**
3. **The administrators jointly to facilitate and ensure Norbert Waithari Njoroge is paid arrears of his share of rent receivables on Kiambu/Town Block1/43 & Kiambu Block 1/35 before further distribution to all beneficiaries within 30 days.**
4. **The administrators to facilitate the valuation of property L.R. 209/8675 Industrial Area property of the deceased's estate with a view to determining rent payable at market value before distribution amongst the beneficiaries of the estate of the deceased.**
5. **In the meantime; the beneficiaries to continue sharing equally rent receivables from L.R. 209/8675 Industrial Area pending distribution of the property.**
6. **Francis Boro Njoroge shall allow access to the property L.R. 4894/44 Garden Estate to all beneficiaries of the deceased's estate especially with regard to the ½ acre allocated to each sibling as gift *intervivos*.**
7. **The suit property L.R. 4894/44 Garden Estate shall be free of tenants unless and until agreed on by the beneficiaries and they share rent receivables equally.**
8. **The administrators to engage a surveyor and a valuer to assess the property and possible mode of distribution without interference with existing permanent structures and development.**
9. **The OCS Kasarani Police Station to supervise the Court orders with regard to L.R. 4894/44 Garden Estate.**
10. **Each party is at liberty to apply.**
11. **Each party to bear its own costs.**
12. **The matter shall be mentioned on 30th March, 2016 for compliance and further direction.**

**DELIVERED AND SIGNED IN OPEN COURT AT NAIROBI THIS 29TH DAY OF FEBRUARY,
2016**

M.W. MUIGAI

JUDGE

In the presence of:

Ms Gakuru for the Applicant and all beneficiaries

Mr. Mariki holding brief for Mr. Oyugi.