



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
FAMILY DIVISION
SUCCESSION CAUSE 278 OF 2002
IN THE ESTATE OF JOHN NJOROGI NGANGA (DECEASED)

MIRIAM WANGUI WANGOMBE.....ADMINISTRATOR/APPLICANT

HANNAH WADONYE NGANGA.....RESPONDENT/PROTESTOR

RULING

John Njoroge Nganga, the deceased died on 21st January, 2001 as evidenced by the death certificate attached to the citation filed in Court on 6th February 2002.

The petitioner filed a petition on 29th May 2002 and listed beneficiaries as;

1. Hannah Wandonye Nganga - mother of the deceased
2. Miriam Wangui Wahome- wife of the deceased
3. Hannah Wambui- daughter

List of assets were;

- a) L. R. NO. 377/541 – Athi River
- b) N.S.S.F dues
- c) Terminal Benefits

The Petitioner obtained a grant on 9th October 2002. The widow of the deceased filed an affidavit of Protest on 1st November 2002. Hon Justice J. Aluoch revoked the grant on 18th December 2002 and issued a new grant in the name of the widow.

On 15th December 2010, the widow/ administrator filed summons for confirmation of grant that the suit property L.R. 337/541 is bequeathed to the only child of the deceased, Ann Wambui Njoroge. The mother of the deceased/Respondent filed an affidavit of protest on 25th February 2011.

The Court gave directions that the matter proceeds by *viva voce* evidence. Subsequent hearing dates have resulted in the hearing not proceeding as the Respondent is advanced in age and cannot make it to Court to testify and withstand cross examination.

It on this basis that parties agreed through respective Counsel that the statements would be admitted by consent and parties to file written submissions which they did 23rd September 2015.

RESPONDENT'S CASE

The Respondent filed a petition on 29th May 2002 and sought to be issued a grant so that she could have Athi River L.R.337/541 be transferred to her as the widow refused to file the petition.

By an affidavit filed on 25th April 2003 the Respondent confirmed she cited the widow of the deceased as evidenced by annexed citation and affidavit of service.

The Respondent stated she did not fraudulently claim the suit property Athi River L.R.337/541. In 1998, the deceased purchased the said property at Ksh. 190,000/= She made a contribution of Ksh. 80,000/= She sold property Plot 528 Thika as shown by the Sale Agreement attached and marked **HWN1**. The deceased bequeathed the property to her as per the annexed translated Will marked **HWN2** which confirms that she owns the suit property and widow and child were to obtain his employment benefits. She was a dependent of the deceased.

The Respondent alleged she developed with her son-in law Joseph Koigi, the suit property and put up rental houses.

By a Replying Affidavit of 20th January 2005 the Respondent stated that she sold her plot 528 in Thika as per the annexed Sale Agreement and used the proceeds to pay for her late son's plot Ksh. 80,000/- The Applicant did not develop the said Plot, she never lived there and all along it is the Applicant who received rent from the said houses.

On 16th March 2005, the Applicant and Respondent filed consent in Court that the rental houses in the suit property shall be apportioned as follows;

- a. Rooms 1 & 2 to the Applicant
- b. Rooms 3-8 to the Respondent
- c. The Objector/Respondent to pay the Applicant Ksh. 1,000/= a month
- d. The Objector/Respondent shall be responsible to settle all bills.

The Applicant stated that the Respondent has not honored the Consent to the extent of payment of Ksh1,000/- a month.

On 26th February 2008, The Applicant filed an application for review of the orders of 8th March 2005 the consent that the Respondent did not comply with. The same application is pending. The Respondent who is advanced in age filed her statement on 29th April 2015 and relied on the list of documents of 9th December 2011.

THE APPLICANT'S CASE

The Applicant Miriam Wangui Wangombe, widow to the deceased on 3rd February 2011 filed summons for confirmation of grant and listed beneficiaries as herself and daughter of the deceased Anne Wambui Njoroge. The asset is L.R. 337/541 Mavoko. The proposed mode of distribution is that the suit property is transferred to the daughter of the deceased Anne Wambui Njoroge absolutely.

The Applicant's supporting affidavit, she outlined her claim to the suit property; her late husband and herself purchased the property at Ksh 190,000/=. In 1998, she borrowed from Ukulima Cooperative Savings and Credit Society Ksh 91, 800/- which was part of payment of the purchase price. The Loan forms; application and approval are attached that the Applicant borrowed the said amount. The balance was from sale of eggs and milk products. She agreed that her late husband was to be registered as sole owner but she was a witness. The Sale Agreement dated 4th September 1998 is attached. The Applicant is

listed as a witness. The Objector/ Respondent was not named in the said Agreement.

In 2000 she borrowed from the same Cooperative Society Ksh.159, 000/= and used the funds to build 8 rental units. The Loan forms; application and approval are attached that the Applicant borrowed the said amount.

Upon death of her husband, the Protestor and her daughter Margaret Kimani forcefully evicted her and their daughter from the matrimonial home. Her daughter Margaret Kimani was charged and convicted in Kikuyu Law Courts Criminal Case 571 of 2001.

The Protestor/Respondent intermeddled with the deceased's estate and she took all household and personal effects from their matrimonial home.

ISSUE

1. Is the suit property L.R.337/541 to be transferred to the daughter of the deceased Anne Wambui as per the summons for confirmation of grant application or to be distributed to the widow mother and daughter of the deceased as beneficiaries and dependents of the deceased and from contributions made?

DETERMINATION

On death of the deceased, the Respondent Hannah Wandonye Nganga mother to the deceased served the Applicant widow of the deceased with citation to obtain grant of letters of administration intestate. The Respondent obtained grant on 6th September 2002. The Applicant filed Summons for revocation of grant and Cross petition to the issuance of the grant. On 19th November 2011, Hon Justice Alouch revoked the grant. On 29th September 2005, the same Court appointed the Applicant and Respondent as joint administrators of the deceased's estate.

The evidence on record confirms as follows;

The Respondent sold plot Athi River L.R.337/541 and gave the deceased the proceeds for purchase of the suit property. In her affidavit she claims to have given Ksh.80, 000/= but her statement of 25th April 2015, she contributed Ksh. 40,000/=. Suffice is to state she made a contribution to the purchase of the suit property although not clear how much she contributed.

The Respondent relied on the Will of the deceased dated 2nd September 2000 in Kikuyu language and translated to English version. The gist is that the deceased's widow and child were entitled to all the deceased's monies in the bank and his terminal benefits. The deceased's mother was to have the suit property they bought jointly.

This is not a valid Will in terms of **Section 5 and 11 of law of Succession Act Cap 160**. It was not witnessed by 2 competent witnesses. The Court observed that the original Will attached has no witnesses but the translated version has 2 witnesses. The said witnesses if at all were not called to testify and provide direct evidence with a view to determining the validity of the Will.

The grant of letters of administration was issued for the deceased who died intestate. The issue of the Will was not canvassed and determined. As of now what is in place is a valid grant of letters of administration intestate and therefore the distribution of the deceased's estate shall be by Law of Succession Act Cap 160.

The Applicant widow to the deceased informed Court she was banished from their matrimonial home with the only child of the deceased by the Respondent and her daughter. All household goods and personal effects were taken from her and she was left to fend for herself and child. This is contrary to **Section 35 of Law of Succession Act Cap 160**.

The Applicant confirmed from documents attached to her application that they bought the suit property jointly with the deceased and she signed the Sale agreement as a witness. She also borrowed from their Cooperative Society funds that were used to purchase the suit property and construct rental houses. The relevant documents were attached to her application. Therefore she sought that the suit property be transferred to the child of the deceased absolutely.

This Court finds that the Applicant is widow to the deceased and therefore she is entitled to life interest in the suit property as provided by **Section 35 of law of Succession Act** until remarriage or death. She has voluntarily decided to transfer her interest to the only child of the deceased Anne Wambui who is an adult now.

On the other hand the Court finds that the Respondent, mother to the deceased made claims that she made some contribution to the purchase of the suit property but it is not clear what was paid. However, by virtue of her age the Court finds she was dependent on the deceased. It is only fair that she gets a portion of the said interest for her upkeep and wellbeing during her lifetime.

The Child of the deceased has the beneficial interest of her father's estate and therefore ought to be the main beneficiary of the deceased's estate.

COURT ORDERS

1. **This Court finds that the deceased's estate is subject to Law of Succession Act as the deceased died intestate.**
2. **The Summons for confirmation for grant filed on 29th September 2005 is granted that the suit property L.R. 337/541 be transferred and registered in the name of the deceased's daughter Anne Wambui.**
3. **The 8 rental rooms on the suit property shall be utilized as follows;**
 - a. **2 rooms to the mother of the deceased Hannah Wandonye Nganga to collect rent directly during her lifetime.**
 - b. **2 rooms to the widow of the deceased Miriam Wangui wangombe to collect rent**
 - c. **4 rooms to the child of the deceased Anne Wambui Njoroge to collect rent.**
4. **Each party to bear its own costs**

READ AND DELIVERED IN OPEN COURT AT NAIROBI THIS 31ST DAY OF MARCH, 2016

MARGARET W. MUIGAI

JUDGE

In the presence of;

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