



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**MILIMANI LAW COURTS**

**FAMILY DIVISION**

**SUCCESSION CAUSE NO. 1086 OF 2003**

**IN THE MATTER OF THE ESTATE OF SOLOMON NG'ETHE NG'ANG'A (DECEASED)**

**NANCY WANJIRU NG'ETHE.....APPLICANT**

**VERSUS**

**ELIZA WAITHIRA NG'ETHE.....2<sup>ND</sup> RESPONDENT**

**PENNINAH NJERI NG'ETHE.....2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

1. The deceased Solomon Ng'ethe Ng'ang'a died intestate on 13<sup>th</sup> January 1997. He left two widows, Eliza Waithera Ng'ethe and Peninnah Njeri Ng'ethe, who on 15<sup>th</sup> September 2004 petitioned the court for the grant of letters of administration intestate. In the petition they indicated the deceased's children to be Andrew Ng'ang'a Solomon, Peter Kamau Ng'ethe, Charles Kinyanjui Ng'ethe, Peter Kamau Ng'ethe, Samuel Njubi Ng'ethe, Mercy Wairimu Oyuda and Eunice Wanjiku Ng'ethe. These children, except Mercy and Eunice, consented to the grant being issued to the petitioners. The grant was issued on 1<sup>st</sup> July 2003. It was confirmed and certificate issued on 7<sup>th</sup> January 2005. The deceased had left land parcel Kiambaa/Kihara/284. The same was distributed as follows:-

1. Andrew Ng'ang'a Solomon – 1 acre;
2. Peter Kamau Ng'ethe – 1 acre;
3. Charles Kinyanjui Ng'ethe – 1 acre;
4. Samuel Njubi Ng'ethe – 1 acre;
5. Petitioners – one acre jointly; and
6. Peter Kamau Ng'ethe – 2 ½ acres.

2. On 11<sup>th</sup> February 2005 the objector Nancy Wanjiru Ng'ethe filed this application seeking that the grant be revoked and/or annulled. Her case was that the deceased was survived by a total of twelve children as follows:-

- a. Andrew Ng'ang'a Solomon;
- b. Peter Kamau Ng'ethe;
- c. Charles Kinyanjui Ng'ethe;
- d. Peter Kamau Ng'ethe;
- e. Samuel Njubi Ng'ethe;
- f. Mercy Wairimu Oyuda (Mrs);
- g. Eunice Wanjiku Ng'ethe;
- h. Margaret Waringa Maina;
- i. Nancy Wanjiru Ng'ethe (objector);
- j. Wairimu Njenga;
- k. Margaret Waringa Munyui; and
- l. Freshia Wanjiru Kibiko.

She stated that she, and her other sisters, had not been consulted at the filing of the petition, during the grant and during the confirmation of the grant. The result was that they had been disinherited. These processes had been undertaken by the petitioners without their knowledge and consent, she stated. She contended that the actions on the part of the petitioners amounted to fraud, hence the request for the grant to be revoked and/or annulled.

3. The petitioners filed a replying affidavit to deny the objector's allegations. Their case was that the objector was all the time involved, and consulted, during the filing of the petition up to the time the estate was distributed at the confirmation of the grant. They stated that the only reason why the objector was not provided for during the distribution was that the deceased had during his lifetime bought land parcel Kiambaa/Kihara/1556 which he had transferred to her (objector). As for Margaret Waringa Maina, Margaret Waringa Munyui, Freshia Wanjiru Kibiko and Wairimu Njenga, their case was that they were married daughters of the deceased and that was why they had not been provided, and that, in any case, they were not interested in the estate.

4. The objector filed a further affidavit to deny that she had any knowledge of the petition and distribution. She stated that the petition and application for confirmation had not even acknowledged her as a daughter of the deceased. As for land parcel Kiambaa/Kihara/1556, she stated that she had bought the same from Robert Nelson Ng'ethe in March 1995 for Kshs.70,000/= and that was without any assistance from the deceased. Robert Nelson Ng'ethe swore an affidavit to say that, indeed, the objector bought the parcel from him.

5. The Court asked that the dispute be heard by oral evidence. On the day of hearing, however, only the objector turned up to support her case. I have, nonetheless, considered all the evidence on record, including the affidavits sworn by either side.

6. Under **section 51(2)(g)** of the **Law of Succession Act (Cap 160)**, the petitioners were under mandatory obligation to provide the names and addresses of all the surviving children of the deceased at the time when they filed the petition for the grant. It is clear from the petition that the name of the objector was omitted from the list provided by the petitioners. The list of those who consented to the filing of the petition also excluded her. **Rule 26(1)** of the **Probate and Administration Rules** required that notice issues to the objector before the grant was issued to the petitioners. None was issued. Thirdly, it is evident from the record that the affidavit sworn by the petitioners in support of the application for confirmation omitted to mention that the objector was one of the children (and beneficiary) of the deceased. The application was not served on her, and she was not present when the distribution was done at the hearing.

7. The objector denied the allegation that she was provided for during the lifetime of the deceased. She got Robert Nelson Ng'ethe to swear an affidavit that she was the buyer of the said property. The Transfer of Lease that she produced showed a direct transfer between Robert Nelson Ng'ethe and her. The consideration was Kshs.70,000/=. I accept that evidence, and find that the deceased did not gift her with any land during his lifetime. She was therefore entitled to benefit from land parcel Kiambaa/Kihara/284 which the deceased left.

8. These are the reasons why I allow the application dated 11<sup>th</sup> February 2005 by the objector. The petitioners shall remain the administrators of the estate of the deceased, but the certificate of confirmation that was issued on 7<sup>th</sup> January 2005, after confirmation was done on 24<sup>th</sup> November 2004 is revoked. Land parcel Kiambaa/Kihara/284 shall revert into the name of the deceased. If any subdivisions and registrations were done in pursuant to the certificate of confirmation, they are ordered cancelled. The parties are given 60 days to agree on fresh distribution that shall include the objector. If they don't, the court shall distribute the estate in accordance with the **Law of Succession Act**. The matter shall be mentioned on 27<sup>th</sup> June 2016 to confirm.

**DATED AND DELIVERED at NAIROBI this 18<sup>TH</sup> APRIL, 2016.**

**A.O. MUCHELULE**

**JUDGE**