



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MURANG'A

Succession Cause No 609 Of 2013

(FORMERLY NYERI HC SUCCESSION CAUSE NO 292 OF 2008)

(FORMERLY NAIROBI HC SUCCESSION CAUSE NO 1115 2006)

IN THE MATTER OF THE ESTATE OF JOHN NJOROGE NGERURO (alias NJOROGE NGERURO), DECEASED

BENSON NDIKITA NJOROGEADMINISTRATOR/APPLICANT

VERSUS

1. STEPHEN MWANGI CHEGE

2. SAMUEL GACHIE NGERURO

3. SULEIMAN NGERURO NJOROGE

4. JOHN MUNENE

5. ELIZABETH NYAMBURA NJOROGEPROTESTORS

J U D G M E N T

1. This judgment concerns the **summons dated 10/09/2007** for confirmation of the grant of letters of administration intestate issued herein on 16/01/2007 to **Benson Nditika Njoroge** (the Administrator/Applicant). He is represented by **Kirubi, Mwangi Ben & Co. Advocates**.

2. Five of the beneficiaries filed affidavits of protest. Three of them, **Stephen Mwangi Chege** and **Samuel Gachie Ngeruro** (whose joint affidavit of protest was filed on 17/01/2008) and **Suleiman Ngeruro Njoroge** (his affidavit of protest was filed on 26/05/2011) are represented by **Wambui Ngugi & Co. Advocates**.

3. The other two Protestors, **John Munene** and **Elizabeth Nyambura Njoroge**, are represented by **Fatuma Wanjiku & Co. Advocates**. Their affidavits of protest were filed on 09/06/2011.

4. On 17/07/2008 the court at Nyeri (Makhandia, J) (where the cause had been transferred from Nairobi) directed that the protested summons for confirmation be heard by way of *viva voce* evidence. The cause was subsequently transferred to this court.

5. On 13/07/2015 the court was informed by the learned counsels for the parties that it was common ground –

a. That there was no dispute as to relationships and that all the beneficiaries are children and grandchildren of the Deceased.

d. That the Deceased had four households represented by his four wives (all now deceased).

c. That there were certain gifts *inter vivos* by the Deceased to some of his children as set out in the affidavits before the court.

d. That the dispute is over distribution of the Deceased's estate in view of those gifts *inter vivos*.

6. Learned counsels agreed that notwithstanding the directions given On 17/07/2008, there was no necessity or oral evidence, and that the dispute ought to be disposed of by way of written submissions. They further agreed that the main exercise for the court will be to try and equalize the inheritances of the beneficiaries so that none gets an unduly larger share than the others. They were alive to the possibility that the beneficiaries' respective shares may not end up being exactly equal.

7. **Kirubi Mwangi Ben & Co.** (for the Administrator) filed their submissions on 25/08/2015. **Fatuma Wanjiku & Co.** (for Protestors John Munene and Elizabeth Nyambura Njoroge) filed theirs on 25/09/2015). **Wambui Ngugi & Co.** (for Protestors Stephen Mwangi Chege, Samuel Gachie Ngeruro and Suleiman Ngeruro Njoroge) filed their submissions on 30/11/2015.

8. Initially this judgment was reserved for 18/12/2015, but due to certain happenings (the Judge being on a long annual leave and exigencies of duty) the same could not be prepared and delivered then. The delay is regretted.

9. I have read the affidavit of the Administrator sworn in support of the summons for confirmation and his supplementary (though titled "further") affidavit filed on 15/06/2011. I have also read the four (4) affidavits of protest.

10. It is common ground that the Deceased had four wives; three of them either pre-deceased him or died after him but before commencement of this cause. The Deceased died on 01/07/1969. The three wives left behind children (and grandchildren). I could not find their names on the papers before the court. The wife who survived the Deceased, Monica Wambui Njoroge (3rd wife) appears to have passed on late in these proceedings, such that there is now no surviving wife of the Deceased. Like the other wives she was survived by a child or children.

11. It is also common ground that the Deceased had the following children with his four wives (many of them deceased but survived by spouses and/or children -

i. Joseph Ngeruro Njoroge: deceased but survived by wife **Gladys Wanjiku Ngeruro.**

ii. Garrison Chege Njoroge: deceased but survived by wife **Damaris Mwhaki Chege.**

iii. Bedan Chege Njoroge: deceased but survived by wife **Elishiba Waitherero Chege.**

iv. Douglas Gakinya Njoroge: deceased but survived by wife **Beth Wanjiku Gakinya.**

v. Elizaphan Ngeruro Njoroge: deceased survived by wife **Elizabeth Njeri Ngeruro.**

vi. Benson Nditika Njoroge (Administrator).

vii. Joram Njoga Njoroge.

viii. Jessee Ngeruro Njoroge: deceased but survived by children **Samuel Gachie Ngeruro** (Protestor), **Peter Njoroge Ngeruro**, **David Mwangi Ngeruro** and **Thomas Muriranja Ngeruro.**

ix. **Samwel Gachie Njoroge**: deceased but survived by wife **Sarah Wanjiru Gachie**.

x. **Christopher Gakinya Njoroge**.

xi. **Rachel Wanjiru Njoroge**: deceased but survived by child **John Munene** (Protestor).

xii. **Ruth Wanjiku Njoroge**.

xiii. **Suleiman Ngeruro Njoroge** (Protestor).

xiv. **Elizabeth Nyambura Njoroge** (Protestor) – apparently forgotten by the Administrator!

13. Protestors Stephen Mwangi Chege and Samuel Gachie Ngeruro are grandchildren of the Deceased by two of his sons, whose mothers are alive and appear in the paragraph above.

14. It is further common ground that during his life-time the Deceased made the following gifts to some of his children (as set out at paragraph 5 of the Administrator's supplementary affidavit -

i. L.R. LOC 8/GATARA/1440 (7.75 Acres)

to Suleiman Ngeruro Njoroge (Protestor).

ii. L.R.LOC.8/KIONJOINI/94 (8.2 Acres)

to Samuel Gachie Njoroge.

iii. L.R. LOC 8/KIONJOINI/95 (8.1 Acres)

to Gerrison Chege Njoroge.

iv. L.R. LOC.8/KIONJOINI/93 (3.0 Acres)

to Jessee Ngeruro Njoroge.

v. L.R.LOC.8/KIONJOINI/92 (3.5 Acres)

to Joram Njoga Njoroge.

vi. L.R. LOC.8/KIONJOINI/90 (5.0 Acres)

to Joseph Ngeruro Njoroge.

vii. L.R.LOC.8/KIONJOINI/83 (8.1 Acres)

to Douglas Gakinya Njoroge (registered in his wife's name, **Beth Wanjiru Gakinya**).

15. The following children of the Deceased never got any gifts *inter vivos* from him (paragraph 6 of the Administrator's supplementary affidavit) –

i. **Bedan Chege Gakinya** who had two wives –

Elishiba Waitherero Chege (alive) and

Esther Wamaitha Chege (deceased but survived by **Thomas Njoroge Chege** and **Ibrahim Ngeruro Chege**).

ii. Elizaphan Ngeruro Njoroge.

iii. Benson Nditika Njoroge.

iv. Christopher Gakinya Njoroge.

v. Rachel Wanjiru Njoroge.

vi. Ruth Wanjiku Njoroge.

vii. Elizabeth Nyambura Njoroge.

16. As for the properties the Deceased died seized of, it is not in dispute that they are –

i. L.R. LOC. 8/KIONJOINI/57 (40.5 Acres).

ii. L.R. LOC. 8/KIONJOINI/20 (6.8 Acres).

iii. L.R. LOC. 8/KAGANDA/593 (8.8 Acres).

iv. L.R. LOC. 8/KIONJOINI/317 (4.85 Acres).

v. L.R. LOC. 8/KIONJOINI/91 (3.2 Acres).

vi. PLOT NO. 6, KIONJOINI MARKET.

17. The Administrator has set out in detail his proposals for distribution at paragraphs 8, 9, 10 and 11 of his supplementary affidavit filed on 15/06/2011. He has also explained in detail the rationale for his proposed distribution. It is plain that his proposed distribution would result in as equal and equitable inheritances for all the Deceased's children as possible in the circumstances (which circumstances include the gifts *inter vivos*). Most of those children are themselves now deceased; their respective shares will go to the spouses/children surviving them.

18. The Protestors Stephen Mwangi Chege and Samwel Gachie Ngeruro (who are grandchildren of the Deceased) allege in their joint affidavit of protest filed on 17/01/2008 that the Administrator has left out some of the Deceased's lands without distributing them. They do not give any particulars of these other alleged lands. On the other hand, the lands they have listed at paragraph 4 of their affidavit appear to be the same lands listed in paragraph 7 of the Administrator's supplementary affidavit – except that he appears to have mis-described L.R. LOC 8/KAGANDA/593 as L.R. LOC 8/KIONJOINI/593. There is a search certificate in the court record that shows that it is L.R. LOC 8/KAGANDA/593.

19. As for their counter-proposals for distribution they offer no explanation or rationale at all for the same, or even why they deem the proposals by the Administrators unfair or inequitable.

20. The Protestor Suleiman Ngeruro Njoroge is a son of the Deceased, and one of those who received land from the Deceased *inter vivos* (he got 7.75 Acres). He gives no reason at all as to why he objects to the Administrator's proposals for distribution. Likewise, he offers no explanation or rationale for his counter-proposals.

21. The Protestor John Munene says he is the only surviving child of Rachel Wanjiru Njoroge, a deceased child of the Deceased (she died in 2010). All he wants is that his mother's inheritance goes to him as she is now deceased and he is her only survivor. That is as it should be.

22. The Protestor Elizabeth Nyambura Njoroge is a daughter of the Deceased. She says that the Administrator has left her out completely and she has not been allocated any inheritance. She says that she ought to be catered for, along with the other children of the Deceased, and in equal measure. But she

has quickly pointed out at paragraph 6 of her affidavit of protest that her mother, **Monica Wambui Njoroge** (who was the only surviving widow of the Deceased until, apparently, recently) was allocated 7.2 acres by the Administrator in L.R. LOC 8/KIONJOINI/57. She suggests that she should be allowed to inherit this share of her mother.

23. In fact, what the Administrator allocated to Monica Wambui Njoroge is 7.00 Acres, not 7.2, in L.R/ LOC 8/KIONJOINI/57. It would be okay for Elizabeth Nyambura Njoroge to take her mother's share as she is a child of the Deceased entitled in law to a share of her father's (Deceased's) estate just like the other children.

24. In summary therefore, I find the proposals for distribution by the Administrator to be fair and equitable as they take into account the gifts *inter vivos* the Deceased made to some of his children. The proposals would result in as fair and equitable a distribution of the net capital estate of the Deceased as possible. The Administrator has set out in detail the rationale for his proposals. It is not surprising that the other beneficiaries (except for the Protestors) agree with the proposals by a consent in Form 37 dated and filed on 20/05/2011.

25. The Protestors (except for John Munene and Elizabeth Nyambura Njoroge) have not offered any rationale or explanation for their counter-proposals for distribution. I find no merit in the protests of Stephen Mwangi Chege, Samuel Gachie Ngeruro and Suleiman Ngeruro Njoroge, and I hereby dismiss them. There is merit in the protests of John Munene and Elizabeth Nyambura Njoroge.

26. In the circumstances I will allow the summons dated 10/09/2007 and hereby confirm the grant issued on 16th January 2007 to Benson Nditika Njoroge. **Distribution shall be as set out in paragraphs 8, 9 and 10 (and as summarized at paragraph 11) of his supplementary affidavit filed on 15/06/2011. But the share of the only wife who survived the Deceased, Monicah Wambui Njoroge, shall go to her daughter Elizabeth Nyambura Njoroge (Protestor) as her mother is now herself deceased. The share of Rachel Wanjiru Njoroge shall go to her only surviving child John Munene (Protestor).** It is so ordered.

27. Parties shall bear their own costs of these proceedings.

DATED AND SIGNED AT MURANG'A THIS 19TH DAY OF MAY 2016

H P G WAWERU

JUDGE

DELIVERED AT MURANG'A THIS 20TH DAY OF MAY 2016