



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NYERI
SUCCESSION CAUSE NO. 724 OF 2013
IN THE MATTER OF THE ESTATE OF DOUGLAS WAMWANGI KANJURU-DECEASED
NDUNYU WA WAMWANGI.....PETITIONER
VERSUS
VIRGINIA MUTHONI MANGI.....PROTESTOR

JUDGEMENT

Douglas Wamwangi Kanjuru (herein after referred to as the deceased) died intestate on 29th July 2013 at the prime age of 87 years. On 8th day of October 2013, **Ndunyu Wa Wamwangi**, a son of the **deceased**, petitioned for letters of administration intestate to the deceased's estate. The **petitioner** named the following persons as persons surviving the deceased:-

- i. Juliana Wanjiru Mwangi-----Wife*
- ii. Jeremiah Kariuki Wamwangi-----Son*
- iii. Esther Nyambura Mwangi-----Daughter*
- iv. Mary Wanjiru Macharia-----Daughter*
- v. Ndunyu Wamwangi-----Son*
- vi. Grace Wambui Mwangi-----Daughter*
- vii. Peninah Wamaitha Mwangi-----Daughter*
- viii. Godfrey Wanjohi Mwangi-----Son*
- ix. Stephen Gichuki Wamwangi-----Son*
- x. Rachel Wairimu Ikubu-----Daughter in law*
- ix. Antony Matu Kiama-----Interested purchaser*

Annexed to the petition is a letter from the local chief dated 1st October 2013 naming the above persons

as heirs to the deceased.

There is a consent pursuant to Rule 26 (2) of the Probate and Administration Rules shown to have been signed by all the above persons. The only properties listed in the affidavit in support of the petition are **Aguthi/Mungaria/824, Aguthi/Mungaria/1207, & Shares in Ihithe Farmers, Equity Bank Account no. 011019049451.**

The petition was gazetted on 25th October 2013 and a grant was issued to the petitioner on 2nd December 2013 and the petitioner applied for the said grant to be confirmed on 5th June 2014 and proposed distributions follows, **Aguthi/Mungaria/824** to be absolutely owned by **Juliah Wanjiru Wamwangi** and **Aguthi/Mungaria/1207** to be absolutely owned by **Antony Matu Kiama**, a purchaser and the proceeds in Equity Bank account number **011019049451** to be inherited by **Ndunyu Wa Wamwangi**, the petitioner herein and *shares at Ihithe Farmers* be inherited by **Juliah Wanjiru Wamwangi** absolutely

On 2nd October 2014, the protestor, **Virgina Muthoni Mwangi** filed an affidavit of protest to the said confirmation stating that the deceased was her father, that she learnt of these proceedings by chance, that she was never served with the petition or citation nor was her consent sought. She states that during his life time, the deceased owned land at Ngorika Scheme No. 72 which he sub-divided and devised to:-

- i. Jeremiah Kariuki (son to the deceased).....5 acres.
- ii. Wilson Ndunyu (Son).....5 acres.
- iii. Grace Wambui (Daughter to the deceased).....2 acres.
- iv. Godfrey Wanjohi.....5 acres.
- v. Rachel Wairimu Ikubu.....5 acres
- vi. Stephen Gichuki.....5 acres.

The protestor further stated that the deceased had indicated that land parcel number **Aguthi/Mungaria/824** would go to their mother **Julia Wanjiru Mwangi** in trust for **Esther Nyambura, Virginia Muthoni Mwangi** and **Penina Wamaitha Mwangi**. The protestor also proposed that the above bank account be inherited by their mother **Julia Wanjiru Mwangi** and that the purchaser **Antony Matu Kiama** gets **Aguthi/ Mungaria/1207**. But later in her testimony in court she stated that she did not know the said **Anthony Matu Kiama** and stated that he was included in the affidavit by the advocate who prepared it and that she signed it with reading the contents.

On record is the affidavit of **Julia Wanjiru Wamwangi**, the only wife of the deceased who avers that on 7th August 2013, in the presence of her sons and daughters, she gave her three daughters **Esther Nyambura, Virginia Muthoni** (the protestor) and **Peninah Wamaitha L.R. NO. Aguthi/Mungaria/1207** and that the entire family mandated her son the petitioner herein **Ndunyu Wa Wamwangi** to sell the aforesaid plot and share the proceeds among her above three married daughters. Pursuant thereto, a potential buyer was identified. She avers that the entire family agreed that she keeps **L.R. NO. Aguthi/Mungaria/824**, the two shares at Ihithe Farmers Co Ltd pending selling in which event the proceeds would be shared by her sons and daughter who did not get a share from the sale of the above land. She also states that the entire family appointed the petitioner to apply for the grant and to operate the bank account at Equity. The contents of the above affidavit were supported by affidavits filed by other siblings on 10th March 2015 among them Jeremiah Kariuki Wamwangi, Mary Wanjiru Macharia, Esther Nyambura Mwangi, Grace Wambui Mwangi, Peninah Wamaitha Mwangi, Godfrey Wanjohi Mwangi, Rachel Wairimu Ikubu and Stephen Gichuki Wamwangi.

Hearing commenced before me on 23rd September 2015. The protestor's evidence was essentially a repeat of her above referred to affidavit. It was her testimony that the petitioner did not disclose all the properties

of the deceased. She called four witnesses in support of her case among them her daughter who admitted that she received a cheque for Ksh. 350,000/= from the petitioner but insisted that it was for a refund for money she had lend to him but was not for proceeds for the sale of land as alleged by the petitioner, and in the various affidavits referred to above. She insisted that she used to loan her uncle money and he would refund, hence the reason why she was given the said cheque.

The deceased's widow is the mother to the petitioner and the protestor. Her evidence was essentially a repeat of the contents of her affidavit referred to above. She also added that the protestor who is her daughter refused to be included in the petition and that they do not talk. She testified that all her sons were given land at Nakuru, that the deceased had no other parcel of land as alleged by the protestor.

The petitioner also testified that the protestor was not listed in the petition because she refused to be included on account of religious convictions. He also testified that that their mother sold some land and shared the proceeds among her daughters among them the protestor and that all his siblings have agreed to the mode of distribution except the protestor, and that the deceased gave all his sons land at Nakuru. He denied the existence of other parcels of land as alleged by the protestor. He also stated that as for the cash a Equity Bank, once he gets the proceeds, he will pass to their mother. He insisted that he obtained a Bankers cheque in the name of the protestors daughter being the protestors share of the cash realized after selling the land which amount was shared among the daughters as directed by their mother. His evidence was that the protestor was the first to call and demand her share, and she stated she had no bank account, hence a transfer was not possible, he proposed to her that he obtains a bankers cheque but she stated that she had no identity card, but instead she introduced her daughter and directed that the cheque be drawn in her name which was done. He insisted that the protestor lied to court particularly on the issue of the said cheque. He denied that he ever borrowed money from her daughter as alleged.

Penina Wamaita Mwangi and **Esther Nyambura** reiterated the contents of their affidavit filed in court and confirmed that they received their respective share of Ksh. 300,000/= from the proceeds of the sale of land from their mother and that they were not claiming anything else from the estate. DW4, a brother to the petitioner confirmed that he also received land from his father and was not claiming anything from the estate and that he supported the mode of distribution proposed by the petitioner.

With regard to the first issue raised by counsel for the protestor in her submissions, from the evidence it is not disputed that the protestor is a daughter of the deceased, hence a beneficiary to the deceased's estate. The explanation offered by the petitioner, her mother and all the siblings is that she refused to have her name listed in the petition on account of her religious convictions. This assertion was not disputed at all by the protestor either in her evidence or during cross-examination. In fact, it emerged that the protestor does not even talk to her mother and the other siblings. Thus, I am persuaded that failure to include her name in the list of the deceased's children can be attributed to her refusal to be included, hence she cannot blame the petitioner for the omission.

But more crucial is the question whether or not the protestor suffered any prejudice due to the said omission. This leads us to the next issue, namely whether the protestors mother sold part of the deceased's land and shared it among her daughters among them the protestor. The evidence of the protestors mother, her daughter as contained in the affidavits filed in court and the oral evidence is in my view clear on this point. All her daughters confirm that they received their respective shares. The protestor denies ever receiving any money. Evidence adduced by the petitioner was that the protestor said she did not have a bank account, hence a bank transfer was not possible, that she had no identity card, hence she could not be paid by cheque, and she instead introduced her daughter in whose name the cheque was written.

Her daughter insisted that the said cheque was a refund for money the protestor had borrowed from her, that she used to access cash from her place of work, loan to the petitioner without the knowledge of her employer and then he would repay. All this she did without the knowledge of her employer. No written evidence was tendered to support any such lending, and I find the said evidence to be totally incredible and highly improbable. I find it difficult to believe that an employee entrusted with cash could get such large sums of money, secretly loan the money to other persons without the knowledge or consent of her employer and return the money. Such an act of dishonesty goes to the root of the credibility of the

witness, and this the more reason why I find her evidence dangerously unreliable.

I find the protestor, like her sisters received her hare of her father's estate by way of the said cheque as explained herein above. I find that her protest has no merits. I accordingly dismiss the protest and order as follows:-

- a. ***That*** the Protest filed herein by **Virgina Muthon Mwangi** on 2nd October 2014 be and is hereby dismissed.
- b. ***That*** the Grant of letters of Administration to the deceased's estate issued to **Ndunyu Wa Wamwangi** on 2nd November 2013 be and is hereby confirmed.
- c. ***That*** Title number **Aguthi/ Mungaria/824** measuring approximately **0.36 Ha.** be inherited absolutely by **Juliah Wanjiru Wamwangi**.
- d. ***That*** Title number **Aguthi/ Mungaria/1207** measuring approximately **0.193 Ha.** be transferred **Antony Matu Kiama** to own absolutely.
- e. The proceeds in Equity Bank account number **011019049451** to be paid to **Juliah Wanjiru Wamwangi**.
- f. ***That*** in the event there are shares at Ihithe Farmers, the same be inherited by **Juliah Wanjiru Wamwangi** absolutely
- g. No orders as to costs.

Right of appeal 30 days

Signed, Delivered and Dated at Nyeri this 27th day July of 2016

John M. Mativo

Judge