



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO. 890 OF 2005

IN THE MATTER OF THE ESTATE OF JULIA NJOKI GIKANGA (DECEASED)

RULING

1. The application for determination is the Summons for Confirmation of Grant dated 30th January 2015.
2. It is at the instance of one of the administrators of the estate, Lucy Njeri Kariuki. She swore an affidavit on 30th January 2015. She states that the deceased was survived by five (5) children, three (3) sons and two (2) daughters, one (1) son of whom is dead. These are Benjamin Kageche Kariuki, George Githiri Gikanga (deceased), Eliud Ngichu Kariuki, Lucy Njeri Kariuki and Jayne Wanjiku Rothwell also known as Jane W. Makanga. The only asset for distribution is Githunguri/Githiga/913.
3. She proposes distribution of the asset in different proportions to some of the survivors named in paragraph 2 above, and other individuals whose connection with the estate is not defined. The children of the deceased who are provided for are Eliud Ngichu, Lucy Njeri Kariuki, Jayne Wanjiku Rothwell and Benjamin Kageche Kariuki. There are several provisions to Marion Wanjiru Mugo, who I have noted from the annexures is standing in for her late husband, George Githiri Gikanga.
4. There is a provision to the estate of Gikanga Kariuki, yet it is not defined in the application who Gikanga Kariuki is. There is portion to be held by Eliud Gichu in trust for the family. It is not made clear who Eliud Gichu is, and whether he is the same as Eliud Ngichu. It is also not explained which family he is holding the property in trust for, and why he should hold the same in trust yet he is not an administrator.
5. Among the documents annexed to the affidavit in support of the application is a certificate of death in respect of George Githiri Gikanga, a letter from the Chief of Githiga Location dated 10th July 2014 identifying the survivors of the said George Githiri Gikanga and a grant of letters of administration *ad litem* made to Marion Wanjiru Mugo in respect of the estate of George Githiri Gikanga. There is a sketch of the subdivisions that the administrator proposes in the application. Finally, there is a consent to confirmation of grant signed by Eliud Ngichu Kariuki, Jayne Wanjiku Rothwell and Marion Wanjiru Mugo.
6. There is a further affidavit sworn on 23rd April 2015 by Lucy Njeri Kariuki. It adds that any residual property be shared equally.
7. Benjamin Kageche Kariuki is a co-administrator of the estate with the applicant. He does not agree with the proposals made by the applicant, and swore an affidavit on 7th July 2015 in protest. In the first place he states that the deceased had six (6) children, and not the five (5) identified by the applicant, for Kariuki Gikanga was not disclosed, although he had left a family. He states that three of the children of the deceased live abroad, namely Eliud Ngichu Kariuki, Jayne Wanjiku Rothwell and Lucy Njeri Kariuki.

8. He explains that Githunguri/Githiga/913 does not exist for the deceased had subdivided it prior to her death into Githunguri/Githiga/2444, 2445, 2446, 2447, 2448, 2449, 2450, 2451 and 2452. His position is that what should be distributed in the confirmation should be the resultant subdivisions and not the original title. He states that the deceased died while in the process of transferring identifiable subdivisions to her children.

9. On the devolution of the assets to the families of the dead children of the deceased, he argues that the property should pass directly to the estates of the deceased children so that the same is handled in the administration of those estates rather than the administration of those estates being done in this cause. He mentions that two of the assets are fully developed and that ought to be taken into account in the distribution. The two assets are Githunguri/Githiga/2447 and 2448. He proposes that each of the children of the deceased gets an individual title, which he has identified. The surplus parcels of land are to be shared equally, being the two developed portions and another.

10. The protestor has attached several documents to his affidavit, but the most germane to the application are the copies of the letters of consent given to the deceased by the Chairman of the Githunguri Land Control Board for the transfer of Githunguri/Githiga/2444, 2446, 2449, 2450, 2451 and 2452 to Lucy Njeri Kariuki, Irene Wanjiku Gikanga, Alex Kariuki Gikanga, Jane Wanjiku Makanga, Benjamin Kageche Kariuki, Eliud Ngicu and George Githire Gikanga, in that order.

11. On 13th July 2015 it was directed that the application be disposed of by way of written submissions. The written submissions on record were filed by the protestor. The document is dated 18th August 2015. It largely analyses the facts as set out in affidavit of protest, emphasizing section 38 of the Law of Succession Act, Cap 160, Laws of Kenya, which provides that where an intestate is survived by children but no surviving spouse, the estate is to be shared equally amongst all the children.

12. I have perused the entire record. For some reason the affidavit supporting the petition lodged herein on 17th November 2006 is not in the record, so I cannot tell from it the asset that the petitioners disclosed as forming the estate. I have though seen copies certificates of official searches dated 31st July 2006 that were lodged at the registry in this cause on 17th November 2006 simultaneously with the petition. They are in respect of Githunguri/Githiga/2444, 2445, 2446, 2447, 2448, 2449, 2450, 2451 and 2452. They all indicate the deceased, Julia Njoki Gikanga, to be the registered proprietor of the said parcels of land. I am satisfied that these were the assets available for distribution as at the date of the deceased's death. There would therefore be no basis for confirming the grant herein founded on a distribution of Githunguri/Githiga/913.

13. The court, by a ruling delivered on 25th July 2012, appointed Lucy Njeri Kariuki, Benjamin Kageche Kariuki and George Githiri Gikanga as administrators of the estate. From the record it is without dispute that George Githiri Gikanga died on 26th May 2011, and therefore, by virtue of section 81 of the Law of Succession Act, the administration of the estate falls in the hands of the surviving administrators, the applicant and the protestor herein.

14. Of the two proposals on that record by the protestor is more plausible. The applicant's proposals cannot stand so long as they are founded on a property that does not exist. Then the application itself is rather vague. The protestor's position is more accurate and reasonable, though I do not see the basis of his proposed distribution, for it departs from what the deceased herself has sought to do in 2001 when she sought the consents attached to the protestor's affidavit. The deceased had clearly expressed her wishes in those documents and the estate ought to be distributed taking that into account.

15. In the end I will determine the application dated 30th January 2015 in the following terms:-

(a) That Lucy Njeri Kariuki and Benjamin Kageche Kariuki are hereby confirmed as the administrators of the estate of the deceased; the grant of letters of administration intestate made on 25th July 2012 shall be amended accordingly;

(b) That the estate of the deceased shall be distributed as follows;

(i) Githunguri/Githiga/2444 to Lucy Njeri Kariuki;

(ii) Githunguri/Githiga/2445 to the Estate of Alex Kariuki Gikanga;

(iii) Githunguri/Githiga/2446 to Lucy Njeri Kariuki, the Estate of Alex Kariuki Gikanga, Jayne Wanjiku Rothwell, Benjamin Kageche Kariuki, Eliud Ngichu Kariuki and the Estate of George Githire Kariuki in equal shares;

(iv) Githunguri/Githiga/2447 to Lucy Njeri Kariuki, the Estate of Alex Kariuki Gikanga, Jayne Wanjiku Rothwell, Benjamin Kageche Kariuki, Eliud Ngichu Kariuki and the Estate of George Githire Kariuki in equal shares;

(v) Githunguri/Githiga/2448 to Lucy Njeri Kariuki, the Estate of Alex Kariuki Gikanga, Jayne Wanjiku Rothwell, Benjamin Kageche Kariuki, Eliud Ngichu Kariuki and the Estate of George Githire Kariuki in equal shares;

(vi) Githunguri/Githiga/2449 to Jayne Wanjiku Rothwell;

(vii) Githunguri/Githiga/2450 to Benjamin Kageche Kariuki;

(viii) Githunguri/Githiga/2451 to Eliud Ngichu Kariuki; and

(ix) Githunguri/Githiga/2452 to the Estate of George Githire Kariuki

(c) Any residual property shall be shared equally amongst Lucy Njeri Kariuki, the Estate of Alex Kariuki Gikanga, Jayne Wanjiku Rothwell, Benjamin Kageche Kariuki, Eliud Ngichu Kariuki and the Estate of George Githire Kariuki; and

(d) Costs shall be in the cause.

DATED, SIGNED and DELIVERED at NAIROBI this 22ND DAY OF JULY, 2016.

W. MUSYOKA

JUDGE