



**REPUBLIC OF KENYA**

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

**MILIMANI LAW COURTS**

**FAMILY DIVISION**

**SUCCESSION CAUSE NO. 1584 OF 2002**

**IN THE MATTER OF THE ESTATE OF SAMUEL KIBUI MWANGI (DECEASED)**

**ROSE WANJIRA KIBUI.....APPLICANT**

**VERSUS**

**WILFRED MWANGI KIBUI.....RESPONDENT**

**RULING**

1. The deceased Samuel Kibui Mwangi died intestate on 29<sup>th</sup> October 2001. The applicant Rose Wanjira Kibui petitioned the court for the grant of letters of administration intestate. Her claim was that she was the widow of the deceased. The objector Wilfred Mwangi Kibui and his sister Monica Wanjiru Kibui filed a cross-petition and objection. These two were some of the children of the deceased by their late mother Hannah Wambui Kibui who died before the deceased. The other children of this house were Elizabeth Wanjiru Kibui, David Mburu Kibui and Dorcas Njara Kibui (now deceased). The applicant had the following children whom she alleged were fathered by the deceased and therefore entitled to benefit from the estate:-

- (a) Michael Chege Kibui;
- (b) Jane Wangui Kibui;
- (c) Catherine Nyokabi Kibui;
- (d) Peter Kirumba Kibui;
- (e) John Kiumbuku Kibui; and
- (f) Grace Wairimu Kibui.

The objector's case was that these were not the children of the deceased, and neither was the applicant the wife of the deceased. The objection was heard and a judgment delivered. The court found that the deceased was married to the mother of the objector; that the objector and his siblings were the children of the deceased and they were the beneficiaries of the deceased; that the deceased eventually married the applicant who had her own children who are named above; and that, although the applicant was a

beneficiary of the estate of the deceased, her children were neither beneficiaries nor dependants of the estate of the deceased. The court appointed the applicant and the objector to be joint administrators of the estate of the deceased, and asked them to seek the confirmation of the grant. I find that the court settled the issue of who were the beneficiaries of the estate of the deceased.

2. On 19<sup>th</sup> April 2013 the applicant applied for the confirmation of the grant. She included her children as some of the beneficiaries of the estate of the deceased, and proposed a sharing that included them. The objector filed an affidavit of protest against that confirmation, basically opposed to the inclusion and the mode of sharing. Various affidavits were filed by either side in regard to the application. Once again, it has been determined that the children of the applicant are neither beneficiaries nor dependants of the state of the deceased.

3. In the affidavit sworn on 14<sup>th</sup> June 2002 by the applicant to support the petition, and in the affidavit sworn on 11<sup>th</sup> March 2003 by the objector in answer to the petition and by way of cross-petition, the estate of the deceased comprised the following properties:

- (a) Dagoretti/Uthiru/1033 measuring 0.14 Ha;
- (b) Dagoretti/Uthiru/1035 measuring 0.10 Ha;
- (c) Dagoretti /Uthiru/1044 measuring 0.14 Ha;
- (d) Parcel of land LR unknown “purchased jointly with the deceased’s brother John Kamau Mwangi”;
- (e) Account at Kenya Commercial Bank;
- (f) Shares at Nacico;
- (g) Shares in Ngwataniro Mutukanio; and
- (h) Death gratuity from Nairobi City Council.

4. In the proposed sharing by the applicant, she asked that Dagoretti/Uthiru/1033 be given to her and her children; Dagoretti/Uthiru/1035 be given to the objector, Monica Wanjiru Kibui, Elizabeth Njeri Kibui, David Mburu Kibui and Dorcas Mwara Kibui in equal shares; the same to equally share Dagoretti/Uthiru/1041; the 4 acres of land at Kinangop/Kitiri to be shared into two equal shares so that the applicant’s household gets 2 acres and the objector and his siblings to get 2 acres; shares in Nacico to be shared equally between the two houses; the 2 acres of unregistered land at Ngwataniro Mutukanio to be shared equally between the two houses and the death gratuity from the Nairobi City Council to be shared equally between the two houses. It is clear that this proposal was based on the premise that the children of the applicant would benefit from the estate. That is not the case.

5. In the affidavit sworn on 24<sup>th</sup> July 2013 to oppose the sharing proposed by the applicant, the objector deponed that Dagoretti/Uthiru/1033 was where the deceased left him and his siblings, this being where they have always lived and where their father put up a three-bedroomed house in 1997. His case was that the applicant has never resided here. However, in paragraph 9 of the affidavit he stated as follows:-

**“THAT my co-administrator has never lived in the parcel of land Dagoretti/Uthiru/1033 since 2001 and soon after my father’s demise, she abandoned us and went to live elsewhere far away from the said parcel.”**

The applicant swore a supplementary affidavit on 13<sup>th</sup> July 2015 to state as follows:-

**“3. THAT in response to paragraphs 5 and 6 of the said affidavit of protest I wish to state that**

**it is not true that the deponent Wilfred Mwangi Kibui and his siblings always resided on the 3 bedroomed house on Plot No. Dagoretti/Uthiru/1033, but the truth of the matter is that upon marrying the deceased herein he built for me the said house while the deponent were staying in a timber house which had been constructed by the deceased for their mother Hannah Wambui Kibui (now deceased).**

**4. THAT after the death of the deceased my co-administrators and his siblings in cahoots with their uncles and aunts forcefully evicted me from and moved into my matrimonial house after they demolished their old timber house to create the impression that they did not have any other place to stay.**

**5. THAT on the said plot Dagoretti/Uthiru/1033, I had also constructed 4 rental houses made of corrugated iron sheets each with a bedroom, kitchen and a bathroom and which deponent and his siblings took over by force after evicting me, they now occupy 2 of them and rented out the other 2. They have also rented out the main 3 bedroomed house and they do not account for the rental income that comes from the said rental houses.”**

The objector swore a further affidavit on 19<sup>th</sup> January 2016 in which he did not respond to the averment that after the deceased died they forcefully evicted the applicant from this piece of land. He also did not respond to the claim that the applicant had put up four rental houses which they had forcefully taken over.

6. Having considered all these affidavits, I find that the deceased left both the applicant and the objector and his siblings on parcel Dagoretti/Uthiru/1033, and that it was after the deceased died that the applicant was forced out of here.

7. The objector stated that parcels Dagoretti/Uthiru/1033 and 1044 were not habitable, but the applicant stated that they were habitable and that, infact, the objector and his siblings were excavating quarry stones from Dagoretti/Uthiru/1044 and selling the stones. The objector made no reference to this excavation in the affidavit sworn on 19<sup>th</sup> January 2016. I find that these two parcels are available for distribution, and the allegation that they are not habitable is a red-herring.

8. Both the applicant and the objector had sworn that one of the properties left by the deceased was the land he had bought with his brother John Kamau Mwangi. The applicant produced an affidavit by David Mwangi Chege who swore that he sold in total eight (8) acres to the deceased and his brother John Kamau Muturi. Each was to get 4 acres. When the deceased died, the objector and his brother David Mburu Kibui came to say they were the representatives of the deceased. He transferred the four acres (comprised in Nyandarua/Kitiri/5730) to them. He produced a copy of the green card. The two later sold the 4 acres to the deceased's brother John Maina Mwangi. I accept that evidence.

9. The remaining properties in the estate are 2 acres in Ngwataniro/Mutukanio, account at Kenya Commercial Bank, shares in Nacico and death gratuity at Nairobi City Council. The deceased left contributions at NSSF. The applicant produced a letter from NSSF showing that the objector and his siblings wrote to NSSF saying that he (the objector) was the claimant. He consequently collected Kshs.134,820/20 which he said he used in the funeral of his late sister Dorcas Mwaura Kibui. She died on 28<sup>th</sup> June 2008, I note, when he had been paid on 1<sup>st</sup> March 2007! Was he keeping the money for the funeral? Why did he not volunteer this receipt until the applicant raised it in 2015?

10. The provisions of **sections 35 and 40** of the **Law of Succession Act (Cap. 160)** were pointed out to me by counsel for the objector in his written submissions. I am also aware of the provisions of **Articles 27, 40 and 45** of the Constitution of Kenya 2010. I bear in mind my observations above, including the fact that the objector and his siblings have already benefitted from the sale of four (4) acres in Nyandarua/Kitiri/5730 and the proceeds of NSSF. They have been earning rent from Dagoretti/Uthiru 1033, and have been excavating and selling quarry stones from Dagoretti/Uthiru 1044.

11. Consequently, I give parcel Dagoretti/Uthiru/1033 to the applicant Rose Wanjira Kibui and allow the objector Wilfred Mwangi Kibui and his siblings 90 days to move therefrom. The objector Wilfred

Mwangi Kibui and his siblings Monica Wanjiru Kibui, Elizabeth Wanjiru Kibui, David Mburu Kibui and Dorcas Njara Kibui (deceased) shall equally share each of the following properties:-

- (a) Dagoretti/Uthiru/1035;
- (b) Dagoretti/uthiru/1044;
- (c) Proceeds at Kenya Commercial Bank account;
- (d) Shares at NACICO;
- (e) Death gratuity at Nairobi City Council; and
- (f) The two (2) acres at Ngwataniro Mutukanio.

This is a family dispute and therefore each side shall bear its own costs.

**DATED and SIGNED at NAIROBI this 15<sup>th</sup> day of SEPTEMBER 2016.**

**A.O. MUCHELULE**

**JUDGE**

**DELIVERED AND SIGNED this 19<sup>TH</sup> day of SEPTEMBER 2016.**

**W. MUSYOKA**

**JUDGE**