



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

FAMILY DIVISION

SUCCESSION CAUSE NO. 2016 OF 2015

IN THE MATTER OF THE ESTATE OF KINGARA GATHUMBU – DECEASED

STEPHEN NJOROGE GATHU..... APPLICANT

VERSUS

ESTHER WAMBUI KINGARA.....RESPONDENT

JUDGMENT

1. The deceased Kingara Gathumbu died intestate on 26th May 2006 and left land parcel Ndeiya/Makutano/874 as his only property. He left a widow Esther Wambui Kingara (the respondent) and two daughters:-

- (a) Mary Wanjiru Kingara; and
- (b) Virginia Nungari Gathu.

Virginia Nungari Gathu had passed away on 2nd March 1998 leaving 6 children, namely:-

- a) Stephen Njoroje Gathu (the applicant);
- b) Ann Nduta Gathu;
- c) Esther Wambui Gathu;
- d) John Kingara Gathu;
- e) Samwel Kiamau Gathu; and
- f) Jane Wanja Gathu.

2. The respondent petitioned the Chief Magistrate's Court at Kiambu for the grant of letters of administration intestate. She was armed with a letter from her local chief which indicated that she and her daughter Mary Wanjiru Kingara were the only beneficiaries of the estate of the deceased. She obtained the grant which was subsequently confirmed, and certificate issued showing that she would share land

parcel Ndeiya/Makutano/874 equally with Mary Wanjiru Kingara.

3. On 14th April 2015 the applicant applied for the revocation and/or annulment of the grant to the respondent on the ground that she had not disclosed to court that his late mother Virginia Nungari Gathu was a beneficiary of the estate, and that she had not provided for her.

4. The respondent admitted in the replying affidavit that, indeed, she had failed to disclose that she had another daughter, the deceased Virginia Nungari Gathu, who had left a family that included the applicant. She conceded that she had not provided for the family of Virginia. Her explanation was that when she went to her local chief for letters to introduce her to court to petition for the grant, he indicated therein that the deceased had left only herself and one daughter (Mary Wanjiru Kingara), and that it was on that basis that she had obtained the grant. She denied the applicant's claim that she was being fraudulent, or that she intended to disinherit Virginia and her children. She stated, and it is evident on the file, that she intended to correct the mistake by filing an application for rectification before the same court. Her application was declined. She stated that she was willing to provide for Virginia and her family.

5. Mary Wanjiru Kingara swore an affidavit in reply to state that the applicant was all the time aware of the petition; that he ought to have raised his complaint but had not. She had her own complaint against the respondent whom she said had refused to share the land as had been ordered in the certificate of confirmation. She has since sued the respondent in the High Court in ELC No. 240 of 2014 at Nairobi. Lastly, she stated that the respondent ought to have got only a life interest in the estate of the deceased and left the remainder to go to the children of the deceased.

6. Mary Wanjiru Kingara did not complain about the mode of distribution of the estate of the deceased, and does not have an application to revoke the grant. Essentially, she does not dispute that her late sister was a beneficiary of the estate of the deceased.

7. Consequently, for failure to provide for the late Virginia Nungari Gathu who was a beneficiary of the estate of the deceased Kingara Gathumbu, the certificate of confirmation of grant issued to the respondent Esther Wambui Kingara on 2nd June 2009 is hereby revoked.

8. The deceased left three beneficiaries:-

- (a) Esther Wambui Kingara (widow);
- (b) Mary Wanjiru Kingara; and
- (c) Virginia Nungari Gathu (deceased).

I direct that the estate of the deceased shall be shared equally among the three beneficiaries.

9. The respondent subdivided Ndeiya/Makutano/874 into Ndeiya/Makutano/1749 and 1750. She then subdivided Ndeiya/Makutano/1750 into Ndeiya/Makutano/2070 and 2071. I direct that titles Ndeiya/Makutano/1749, 2070 and 2071 be cancelled, so that the estate reverts to Ndeiya/Makutano/874 in the name of the deceased. This will allow the sharing of the land into three equal portions. The portion of Virginia Nungari Gathu (deceased) shall be registered in the joint names of Stephen Njoroge Gathu, Ann Nduta Gathu, Esther Wambui Gathu, John Kingara Gathu, Samuwel Kiamau Gathu and Jane Wanja Gathu. Each child shall have an equal interest in the portion.

10. A fresh certificate of confirmation shall issue to Esther Wambui Kingara (the respondent) reflecting the mode of distribution indicated in the forgoing.

11. I make no order as to costs, as this is a family dispute.

DATED and DELIVERED at NAIROBI this 13th DECEMBER 2016.

A.O. MUCHELULE

JUDGE