



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
SUCCESSION CAUSE NO. 79 OF 1986
IN THE MATTER OF THE ESTATE OF HENRY GITANGU KIBATHI (DECEASED)

RULING

1. The deceased died intestate on 12th April 1984 at Nyandarua. Subsequently Winfred Wanjiku Gitangu applied for grant of letters of administration ad colligenda bona and was issued with grant of letters of administration on 4th February 1986. Subsequently one Njoroge Mugo made an application seeking clarification as to whether the said grant was had power to borrow on the security of **L.R.7022/55** for purposes of development of the said plot of land. Subsequently the administrator to the deceased's estate sought confirmation of the said grant on 22 November 1991 and the same was confirmed on 5th December 1991 and was issued with a certificate of confirmation. The administrator to the deceased's estate died on 5th July 2007 and her son Michael Kibathi Gitangu via the application dated 26th August 2014 applied for substitution of her mother as administrator to Henry Gitangu Kibathi's estate.

2. The applicant seeks to be substituted with the deceased administrator Winfred Wanjiku Kibathi and rectification of the grant issued to her. He deponed that the deceased administrator had taken a loan facility with the AFC and at the time of her death she had not completed paying for the same. That the same continues to attract 20% per day and should the court not grant the orders sought the estate of the deceased stand to suffer irreparable loss and prejudice as AFC has threatened to take adverse action against the estate unless the loan is repaid. He deponed that the loan currently stands at Kshs. 1, 801, 876/- adding that he and her sister Annah Nyathira Kibathi wish to be substituted as the administrators in order to sell it and offset the said loan.

3. The application was opposed by Michael Gitangu Kibathi who is a son of the late Henry Gitangu Kibathi he argues that the applicants have secretly moved to court to obtain grant of administration of their father's estate therefore creating suspicion. He depones that AFC is his employer and that his siblings were wrong in isolating him in the decision for substitution or rectification of the grant as he only learnt of the current developments when he was served with a consent to sign for his two sisters to become administrators of his father's estate. Though he is not opposed to his two sisters being administrators he seeks to be enjoined as an administrator to the estate of their late father Henry Gitangu Kibathi.

4. However, on 20th February 2015 parties filed a consent to the effect that Michael Kibathi Gitangu, Joan Wanguh Kibathi and Annah Nyathira Kibathi be appointed as joint administrators of the estate of Henry Gitangu Kibathi and proceeded to list the assets of the deceased as follows;

- i. L.R. 6585/25/VI also known as Nyahururu Gitangu Kibathi

ii. Shares at British American Tobacco limited

iii. Shares at centrum Investment Company Limited

That the shares at British American Tobacco limited and Shares at Centrum Investment Company Limited be sold and the proceeds used to offset the loan at AFC. Should the sale proceeds be in excess the excess amount be deposited in a joint account to be opened by the three administrators and the same shall be held on their own behalf and the behalf of Henry Gitangu Njiiri and Jeremy Gitangu Kiarie the children of the deceased brothers. Parties also agreed to file submissions on distribution of **L.R. No. 6585/25/v also known as Nyahururu Municipality BLK 4/4** for determination by the court and sought a mention date on 16th march 2015 for purposes of taking a ruling date.

5. Parties filed written submissions. The objector reiterated his replying affidavit further stating that the parties had recorded a consent. In his view he proposed that since the estate of the beneficiaries mother is to be administered it be listed as part of their properties therein be subdivided as parties shall agree alternatively; that the applicants share the property namely **L.R. No. 6585/25/v Nyahururu Municipality BLK 4/4** and allow the objector to obtain his share equivalent of the share he would have taken in the above property when distributing his mother's property.

6. The applicant in their submissions reiterated their affidavits adding that the beneficiaries agreed to co-administer the deceased estate as long as they co-operated with each other. They subsequently listed the beneficiaries as follows; Henry Gitangu Kibathi; Annah Nyathira Kibathi; Joan Wanguh Kibathi; Henry Gitangu Kibathi –son to deceased brother, Jeremy Gitangu –son to deceased's brother Lawrence Kiarie

7. It was their submissions that parties had agreed on the schedule of deceased's assets adding that the parties had agreed to dispose of the BAT and Centrum shares and use the proceeds to off-set the loan with AFC and that the only remaining asset was **L.R.6585/25/V** also known as **Nyahururu Municipality BLK/4/4**. They submitted that the said parcel of land had therein a permanent building of sentimental value which they did not wish to have sold and proposed that the portion of land that the house stands be excised and the same be jointly held by all 5 beneficiaries that the remainder of the land be subdivided into 5 equal portions for all the beneficiaries as this shall justly cater to all the beneficiaries.

Determination

8. The three beneficiaries Michael Kibathi Gitangu, Joan Wanguh Kibathi and Annah Nyathira Kibathi filed a consent on 20th February 2015 agreeing to co-administer the deceased's estate together. They also agreed on sale of the deceased's shares held with both British American Tobacco and centrum and use the said proceeds to off-set the loans with AFC. At the time the parties came for a mention date no information was given to this court on whether the said shares were sold and if they were sold the amount of money the same fetched. Was it enough to off-set the said loan? Was there surplus monies from the said sale? From the information available to this court am unable to answer the above questions.

9. That then brings me to the only remaining asset left for distribution **L.R.6585/25/V** also known as **Nyahururu Municipality BLK/4/4**. The applicants proposed that the said parcel of land be shared out to 5 beneficiaries the 3 co-administrators and Henry Gitangu Njiiri a son to their deceased brother Stephen Njiiri and Jeremy Gitangu Kiarie a son to their deceased brother Lawrence Kiarie. They proposed that the land on which the house stands be held jointly by all 5 beneficiaries with other land being shared into 5 equal portions for each beneficiary.

10. The respondent proposes that the said property be listed as an asset in her mother's estate and be shared out as parties will agree alternatively he is ready to allow the applicants to take the said property as along as he gets an equivalent share when distributing the properties in their mothers estate. On this I find as follows; the property in question formed part of the deceased's estate Henry Gitangu Kibathi and as such the same should be distributed as per the estate of the deceased and not consolidated with the estate of the late Winfred Wanjiku Gitangu. Owing to the fact that it is not refuted that two of the brothers Stephen Njiiri and Lawrence Kiarie are deceased hence I will concur with the applicants suggestion to

give their late brothers shares to their sons. This in turn includes Henry Gitangu Kibathi and Lawrence Kiarie as beneficiaries entitled to equal share in the late Henry Gitangu Kibathi's estate.

11. A look at the certificate of confirmation Stephen Njiiri and Lawrence Kiarie were the listed beneficiaries but they died after the confirmation of the said Grant but before their father's estate was distributed as per the said certificate of confirmation as such it is in order if the sons of the deceased brothers are allowed to inherit the share that was to go to their fathers. In so doing this then means that the certificate of confirmation needs to be rectified with the substitution of the deceased's names with their sons name as beneficiaries in the estate.

12. This leads me to make the following orders; Let the grant of letters of administration issued by this court on 22 November 1991 confirmed on 5th December 1991 be rectified to include Michael Kibathi Gitangu, Joan Wanguh Kibathi and Annah Nyathira Kibathi as co-administrators in the estate of the late Henry Gitangu Kibathi (deceased). I order the administrators to be issued with fresh grant of letters of administration. The rectified grant schedule shall be amended as per the consent of the parties and shall list the 5 parties mentioned as the beneficiaries entitling them to share the said parcel of land equally amongst them. The land on which the said house stands be registered jointly in the names of all the 5 beneficiaries. No orders as to costs.

It is so ordered.

Dated, signed and delivered this **30th** day of **April** 2015.

R. E. OUGO

JUDGE

In the presence of:-

.....**For the Applicants**

.....**For the Respondent**

.....**Court Clerk**