



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
SUCCESSION CAUSE NO. 2764 OF 2011

IN THE MATTER OF THE ESTATE OF JOSEPH NJENGA GATHII (DECEASED)

MARY WANJIRU NJENGA & 4 OTHERS.....APPLICANT

VERSUS

ELIZABETH WAIRIMU NJENGA.....1ST RESPONDENT

MARY NYANDUNDU MUNGAI.....2ND RESPONDENT

SAMUEL GATHII NJENGA.....3RD RESPONDENT

JUDGMENT

PLEADINGS

The deceased died on 15th September, 2000 as evidenced by the death certificate attached to the petition. The applicants Elizabeth Wairimu Njenga, Mary Nyandundu Mungai and Nancy Wanjiru Njenga filed an application for summons for appointment of administrators on 25th July, 2013 under **Rule 49 of the Probate and Administration Rules**.

The orders sought were;

- a. The court to issue orders as to the appointment of the following persons/beneficiaries as administrators of the estate of Joseph Njenga Gathii (deceased).

Elizabeth Wairimu Njenga

Mary Nyandundu Mungai

Nancy Wanjiku Njenga

- b. That the court to issue orders that all the beneficiaries who had not consented to the above named administrators; namely

Patrick Mbugua Njenga

Anastacia Wanjiru Njenga

Alice Mugure Mbagu

Robert Kiarie Njenga

Mary Wanjiru Njenga

be ordered to appear in Court to explain their reasons thereof.

- c. The Court to recognize the right of the purchaser of part of the estate of the deceased property by KIRUNJE INVESTMENTS.

The application is supported by an affidavit of the three (3) proposed administrators annexed to the application; they deponed as follows;

The court on 26th July, 2012 by an order of Hon. Justice Mugo revoked the grant of letters of administration issued to;

1. Elizabeth Wairimu Njenga
2. Mary Nyandundu Mungai
3. Samuel Gathii Njenga as they failed to efficiently and effectively administer the estate of the deceased.

As a result of the revocation of grant; the estate has been left to waste deplete without administrators. The deceased held shares in Limuru Crest Farmers Company which have been since sold with assets of the Company. There is Ksh. 6,800,000/= due for payment to the beneficiaries and the same cannot be released unless the court appoints the administrators to the deceased's estate.

HEARING

On 29th April, 2015, the court held a hearing session to hear from the beneficiaries who declined to consent to the appointment of applicants as administrators to the estate.

The objectors confirmed the beneficiaries of the deceased estate comprise of three (3) houses as follows;

- HOUSE A
- (i) Mary Nyandundu Mungai
 - (ii) Clement Njunge Njenga
 - (iii) Anastasia Wanjiru Njenga
 - (iv) Mbagu Njenga(deceased)
 - (v) Mbugua Njenga
 - (vi) Biaru Njenga (deceased)
 - (vii) Esther Nyokabi Kihika
 - (viii) Caroline Mumbi

- HOUSE B
- (i) Hannah Nyandundu Kabiru(deceased)

- (ii) Mary Wanjiru Njenga
- (iii) Esther Nyokabi Kamau
- (iv) Samuel Gathii Njenga
- (v) Robert Kiarie Njenga
- (vi) Nancy Wanjiku Njenga
- (vii) Daniel Biaru Njenga (deceased)
- (viii) James Mwaura Njenga(deceased)

- HOUSE C
- (i) Mary Nyandundu
 - (ii) Gathii Njenga
 - (iii) Kanyari Njenga
 - (iv) Wanjiku Njenga
 - (v) Nyokabi Njenga
 - (vi) Biaru Njenga
 - (vii) Muiro Njenga
 - (viii) Mumbi Njenga

Pursuant to the order by Hon. Justice Kimaru of 15th May, 2014 which the objectors were to appear in Court and explain the objection this Court held the interpartes hearing.

Mr Kimathi advocate representing **Mary Wanjiru Njenga** told the Court that the three (3) administrators intermeddled with the deceased's estate and sold 0.93 acres of L.R. 4886/8 Original number 4886/7/2 at Ksh. 9.5m. The sale price proceeds were distributed among the administrators to distribute to the beneficiaries of the house each of them represented. Mary Wanjiru Njenga did not get her share of the sale proceeds to date.

The administrators received money from Limuru Crest Farmers Company and Mary Wanjiru Njenga was to receive Ksh. 160,000/= as her share from the administrators and she did not receive it at all.

Mary Wanjiru Njenga was awarded costs of Ksh. 72, 054/= against the administrators in a matter decided in Court and she was not paid.

Robert Kiarie Njenga informed the Court that he is a member of the 2nd family/house. He said that their home is divided; him and Mary Wanjiru Njenga are one team and Samuel Gathii Njenga and Nancy Wanjiku Njenga are a separate team. He said he did not bring documents to Court to show why he opposed the administrators as he was involved in an accident while on his way to Court from Naivasha. He had an affidavit. He proposed Mary Wanjiru Njenga to represent their house.

Peter Kanyari Njenga from the 3rd house informed the Court that they want as a family their mother Elizabeth Wairimi Njenga to remain as administrator of the estate of the deceased and to represent their house.

Mary Nyandundu Mungai one of the administrators said she is the 1st born child of the 1st family, she took care of their mother when their brother Patrick Njenga had neglected her. She was also involved in getting a share of the land from their late mother for her sister in-law Alice Mugure Mbagu's children.

She informed the Court that the deceased died on September, 2000 and the family could not agree until after 10 years in 2010 that they filed the petition in Kiambu Law Courts and the three (3) administrators were appointed.

She confirmed to the Court that they sold 0.93 acres of the suit property to the Kirunje Investments through its Director Mr. Ernest Njenga Kiruku. They also used rest of the proceeds to pay (legal fees, survey fees, rates etc). The proceeds were divided into three (3) parts and each administrator took the share to subdivide and distribute to family members in their house. The deceased's assets in Limuru Crest were sold and there are payments due which have not been released as there are no administrators to the estate of the deceased. The balance of the purchase price of 0.93 acres was divided into Ksh. 800,000/= each to each the houses and the family members were to get a share. The family members of each house have tried to resolve the matter at home through various meetings but to no avail.

Anastasia Wanjiru Njenga through her advocate objected to the appointment of the administrators due to the reasons adduced by Mary Wanjiru Njenga and she concurred with the position taken. She stated through her lawyer Mr. Gachura that the administrators were to collect and gather the assets of the deceased and not to distribute them before the confirmation of grant.

She objected to the sale of land to Kirunje Investments as the sale was before the confirmed grant was issued by the Court. After the sale she did not get a share of the proceeds at all. She stated that she would like to be appointed administrator of the estate on behalf of her home/house.

Patrick Mbugua Njenga also from the same house told the Court that he has been threatened by his siblings because of the succession matter. He was isolated from the meetings and the administrator did not hold meetings at home but at the Dairy. He learnt of what was going on and got information from a lawyer and he lodged a complaint against the sale of the land to Kirunje Investments Limited. Later the director of the company begun to build on the property despite the Court order that was obtained in Kiambu Law Courts to stop construction was not complied with. He informed this Court that the suit property comprises of 15 acres and each of the wives of the deceased was allocated portions by the deceased as follows;

- a. Zipporah Wanjiku Njenga 1st house 3 acres
- b. Hannah Muthoni Njenga 2nd house 2 acres
- c. Elizabeth Wairimu Njenga 3rd house 3 acres

In the 1st house, his four (4) sisters isolated him and they did not want him involved or to participate in the distribution of the estate, of the deceased. He has been threatened by members of the 3rd house; the 3rd administrator and her four (4) sons, the 2nd house by Robert Kiarie and Samuel Gathii have harassed him too. He was forced to agree and yield to their wishes on the distribution of the estate. There has been a dispute about the distribution of his late mother's share. He has never received any money from the sale of Kirunje Investments.

He said administrators concealed some of the properties of the deceased and they begun to dispose of the properties without disclosing to the beneficiaries. He listed other properties not listed as assets of the deceased's estate as follows;

- a. Limuru Dairy Farmers Co-operative Society
- b. Muguga Pyrethrum Co-operative Society
- c. Limuru Crest Building – Ruiru Road (50 shares)
- d. Kagia Farm (6.4 acres)
- e. Kenton Farri – Kiambogo

- f. Kantafu Welfare Society
- g. Eldoret 12 acres Land
- h. Barclays Bank Branch Limuru
- i. Longonot 20 acres
- j. Kamande Farm

Nancy Wanjiku Njenga informed the Court that she should be appointed administrator to represent her mother's house (the 2nd house) as Robert and Samuel do not agree and Mary Wanjiru Njenga cannot talk to Samuel Gathii.

Alice Mbugua Mbagu wife to the deceased son of the deceased herein; informed the Court that she met with her in-laws and they went to a lawyer to deal with the issue of the property of the deceased their father. Later they did not know what happened, the only thing she recalls is that the administrator Samuel Gathii asked them to sign a letter and he promised they would get their share of their property. She refused to sign the letter as she had not been consulted and she did not know what the matter was about.

She was shown the proposed subdivision of land and she did not agree with the proposal. She said that had been given a plot by her father in-law during his life time and when she told the family members all the siblings refused. She attended one of the meetings and she was not allowed to speak. She went to the lawyer and asked to attend the meetings and she was informed that each house would meet separately and determine who would be the administrator.

The 2nd issue raised in the hearing is with regard to the interested party who purchased from the administrators of the estate of the deceased before the grant was revoked 0, 93 acres of the suit property.

By a supplementary affidavit filed on 21st January, 2015, the deponent Mr. Ernest Njenga Kiruku stated that he bought 2 portions of land to assist the family of the deceased to settle debts owed by the deceased and obtain legal fees to file for

and obtain grant of letters of administration intestate. The two (2) plots are A 11 and A 26 as per the attached subdivision marked "ENKI" he therefore has an interest in the suit property that should be protected by the Court.

During the hearing on the same day, Counsel for the interested party/purchaser Ms.Thande; informed the Court the administrators approached Mr. Ernest Njenga Kiruku and they sought to sell him a portion of the land L.R. 4886/8. The proceeds were to settle the debts of the deceased. He bought the land through the Company Kirunje Investment of which he is a director.

The purchase price was Ksh. 9,500,000/= the company paid Ksh. 6,115, 006.25 to the administrators in 2011. Later four (4) beneficiaries of the deceased's estate approached him to buy another plot from the estate; at Ksh. 10.8 million for 1 acre and Kirunje Investments paid Ksh. 6,620, 650/= to the following members of the family;

- a. Robert Kiarie Njenga
- b. Nancy Wanjiku Njenga
- c. Samuel Gathii Njenga
- d. Esther Nyokabi Njenga of the 2nd house/family.

The purchaser was granted vacant possession of the two (2) portions of land. Counsel produced the two (2) Sale Agreements for the Courts perusal. The purchaser confirmed the facts through his testimony in Court. Counsel informed the Court her client did not know material facts regarding the deceased's estate and the purchaser's interest in the estate of the deceased was concealed and not disclosed to all beneficiaries; and the Court. The purchaser incurred expenses in development of the bought portions of the land. The purchaser is ready and willing to pay the balance of the purchase price to the beneficiaries.

DETERMINATION

After hearing of all the objectors and the administrators present in Court, as provided in **Section 68 and 70 Law of Succession Act Cap 160** the Court finds as follows;

The deceased did not write a Will, he died intestate and therefore the distribution of his estate is by **Law of Succession Act Cap 160** through administrators; the appointment of administrators is provided by **Section 66 of Law of Succession Act Cap 160** which provides;

“when a deceased has died intestate, the Court shall, save as otherwise expressly provided, have a final discretion as to the person or persons to whom a grant of letters of administration shall, in the best interests of all concerned, be made, but shall, without prejudice to that discretion, accept as a general guide the following order of preference -----

(a) surviving spouse or spouses, with or without association of other beneficiaries;

(b) other beneficiaries entitled on intestacy, with priority according to their respective beneficial interests as provided by part V;

(c) the Public Trustee; and

(d) Creditors:

Provided that, where there is partial intestacy, letters of administration in respect of the intestate estate shall be granted to any executor or executors who prove the Will.”

By virtue of **Section 84 Law of Succession Act Cap 160** it provides that;

“.....Provided that, where valid polygamous marriages of the deceased person have resulted in the creation of more than one house, the Court may at the time of confirmation on the grant appoint separate trustees of the property passing to each or any of those houses as provided by Section 40.”

The Court may appoint separate members of family among each of the houses as provided in **Section 40 of Law of Succession Act Cap 160**.

Section 83 of Law of Succession Act Cap 160 spells out the statutory mandate of the legal representatives of the deceased's estate whether the administrators where there is no Will or executors where there is a Will. The Court by the order of Hon. Justice Mugo of 27th July, 2012 revoked the grant to the administrators who now seek reappointment.

From the oral evidence adduced during the hearing by the objectors;

- a. The administrators have been accused of non consultation with other beneficiaries with regard to the deceased's estate.
- b. They did not obtain approval from beneficiaries of the deceased's estate of sale of part of the land to Kirunje Investment which is ancestral and communal land. They did not consult on the sale price and what will the proceeds would be used for.
- c. They did not ensure that all beneficiaries received their share of the proceeds of the purchase price of the sale of the two (2) plots to Kirunje Investments.
- d. They did not obtain a confirmed grant before distribution and sale of part of the estate.
- e. They did not file in Court a full and accurate inventory of the properties of the estate of the deceased or disbursements and expenses of the purchase price.
- f. After they obtained the grant to gather and collect the properties of the deceased they did not investigate the various properties alleged to be left out of the list of assets of the deceased's estate as enumerated by Patrick Mbugua Njenga.

- g. The Court has noted that the 2nd house particularly the four (4) siblings except Mary Wanjiru Njenga sold out land to Kirunje Investments and did not share proceeds and/or disclose this fact to the other beneficiaries.

For the above mentioned reasons and the fact that all the objectors have resoundingly refused the reappointment of the former administrators, this Court declines to reinstate any of them. More so as it would be contrary to the valid regular and lawful orders of this Court which revoked the grant of 27th day of July, 2012 as the administrators failed to effectively administer the deceased's estate.

This Court requested the parties after the hearing to propose an alternative person from each home to be appointed administrator and forward the name to Court. They did not.

Therefore, the Court hereby appoints administrators of the estate of the deceased as follows;

- a. Patrick Mbugua Njenga from the 1st house
 - b. Mary Wanjiru Njenga from the 2nd house
 - c. Peter Kanyari Njenga from the 3rd house
1. They shall carry out their statutory duties under **Section 83 Law of Succession Act Cap 160**; hold meetings, consult and obtain approvals and disclose material facts to the beneficiaries.
 2. They shall investigate, gather and collect the unlisted items as stated by Patrick Mbugua Njenga.
 3. They shall prepare and file the summons for confirmation of grant within 90 days and any aggrieved party to file the objection/alternative mode of distribution.
 4. They shall open a joint account of the receivables of the balance of the purchase price for the sale of the two (2) plots from Kirunje Investments and distribute equally amongst all beneficiaries (after establishment of who received the other beneficiaries share in the first payment and those who did not receive their share when the 1st amount was paid and shared).
 5. They shall contact and liaise with Limuru Crest Company Limited and recover and receive the proceeds of Ksh. 6,800,000/= and distribute to all beneficiaries equally after legal payments and render a full and accurate inventory and account to the beneficiaries and the Court.
 6. Any aggrieved party to file protest and proposed mode of distribution.

With regard to Mr. Ernest Njenga Kiruku T/A Kirunje Investment, interest in the property the Court has established that the purchase of the two (2) plots from the deceased estate was at the instance of the administrators on the one hand in relation to the 1st plot and the beneficiaries (2nd house) on the other in relation to 2nd plot.

The transaction was above board, the Sale Agreements have been attached and he disclosed the details to the Court and the parties. The purchaser was a bonafide purchaser for value without notice of any defective title in this case; he was not privy to the infighting and wrangles between the beneficiaries and administrators. He paid part of the purchase price as agreed to the parties. He agreed to pay the balance once the dispute is resolved.

Therefore by virtue of **Section 93(d) of Law of Succession Act Cap 160** which provide that;

'' (1) A transfer of any interest in immovable or movable property made to a purchaser either before or after the commencement of this Act by a person to whom representation has been granted shall be valid, notwithstanding any subsequent revocation or variation of the grant either before or after the commencement of this Act.

(2) A transfer of immovable property by a personal representative to a purchaser shall not be invalidated by reason only that the purchaser may have notice that all the debts, liabilities, funeral and testamentary or administration expenses, duties and legacies of the deceased have not been discharged nor provided for.

The transfer is a legal valid and regular transaction and the interest to the deceased estate is recognized subject to the following conditions;

- a. The balance of the purchase price be deposited in the new administrators joint interest earning account within three (3) months from today.

READ AND SIGNED IN OPEN COURT ON THIS 12TH DAY OF JUNE, 2015

M. MUIGAI

JUDGE

In the presence of;

Mr. Gathiru holding brief for Mr. Mwicigi for the objectors.