



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

FAMILY DIVISION

SUCCESSION CAUSE NO. 2379 OF 2008

(SUCCESSION CAUSE NO. 52 OF 2009 THIKA LAW COURTS)

IN THE MATTER OF THE ESTATE OF GATAU KANYANGE (DECEASED)

**HELLEN MUTHONI
APPLICANT**

VERSUS

**SIMON NJOROGE GITAU.....1ST
RESPONDENT**

**WASHINGTON KARIUKI NJOROGE.....2ND
RESPONDENT**

**JOHN MWANGI GATAU.....3RD
RESPONDENT**

VIRGINIA NYAMBURA GATAU.....4TH RESPONDENT

RULING

PLEADINGS

By an application the summons for confirmation of grant dated 2nd June, 2010, the Applicant sought the grant issued on 9TH October, 2009 to be confirmed.

The Applicant filed a petition for grant of letters of administration from the estate of Gatau Kanyange her grandfather in **Thika Law Courts Succession Cause 52 of 2009**. The Respondents grand children of the deceased too objected to the grant. The Court issued the grant to the Applicant on 3rd June, 2003.

The Objectors filed in the High Court Nairobi Family Division **Succession Cause 196 of 2010** and later **Succession Cause 2739 of 2008** wherein all files were consolidated to the present Court file.

In the High Court, the Respondents obtained a grant on 3rd April, 2009 which was confirmed on 25th May, 2010. In the confirmed grant the 1st – 3rd Respondents were to share equally **KAHUTI/LOC10/2539** and the 4th Respondent was to take **KAHUTI/LOC10/2540** absolutely. This was

not disclosed until the Applicant sought to confirm the grant issued in **Thika Succession Cause 52/2009**.

In the Applicant's summons for confirmation, she included the Respondents as co-beneficiaries but in this application in **Succession Cause 52 of 2009**, in the present Court file the Respondents left out the Applicant.

In **Succession Cause No. 52 of 2009** the pleadings include the deceased's family tree as follows;

- a. The deceased Gatau Kanyange had one (1) sister and one (1) brother.
- b. Kibui Kanyange brother to the deceased had a daughter named Margaret Waruinu.
- c. Margaret Waruinu was the mother of the four (4) Respondents grand children of the deceased namely;
 - i. Simon Njoroge
 - ii. Washington Kariuki
 - iii. John Kanyange
 - iv. Vineh Nyambura
- d. Beth Muthoni sister to the deceased had a daughter called Gladys Wanjiru.
- e. Gladys Wanjiru the mother of the Applicant Hellen Muthoni Kuria grandchild of the deceased. The Applicant deponed that she took care of her grandfather for 25years before he passed on. He did not have a family of his own.

The Chief's letter dated 17th December, 2008 confirmed both the Applicant and Respondents as grandchildren of the deceased and would file the Succession Cause jointly.

ISSUES

1. Is the Applicant Hellen Muthoni Kuria a beneficiary of the deceased's estate?
2. Should the summons for confirmation of grant of 3rd June, 2010 be allowed or granted?

LAW

Section 39(1) of the Law of Succession Act Cap 160 stipulates;

1. ***Where an intestate has left no surviving spouse or children, the net intestate shall devolve upon the kindred of the intestate in the following order of priority;***
 - a. ***Father; or if dead***
 - b. ***Mother; or if dead***
 - c. ***Brothers and sisters, and any child or children of deceased brothers and sisters, in equal shares; or if none***
 - d. ***Half-brothers and half-sisters and any child or children of deceased half -brothers and half-sisters, in equal shares; or if none***
 - e. ***The relatives who are in the nearest degree of consanguinity up to and including the sixth degree, in equal shares.***

ANALYSIS

The family tree filed by the Applicant in **Succession Cause 52 of 2009** established that the Applicant and Respondents are grand children of the deceased by virtue of being children from the deceased's sister and brother who are also deceased. They are the relatives of the deceased in the nearest degree of consanguinity up to and including being grand children of the deceased. Therefore they should share his property equally.

In the matter of Wamuhu Murimi Nairobi High Court Succession Cause 460 of 2002 Hon. Koome J of the High Court (as she then was) held;

When an intestate is not survived by a spouse or children or parents or siblings, their estate devolves upon any surviving child or children of the intestate's brothers and sisters in equal shares.

The Applicant is a beneficiary to the deceased's estate as much as the Respondents. They are all grandchildren of the deceased but from different parents. The Respondents have no legal basis or reason to exclude her from the distribution of the deceased's estate.

The 2nd issue is should the Court confirm the grant issued to the Applicant Hellen Muthoni Kuria on 9th October 2009 by the **Chief Magistrate's Court Thika Law Courts in Successions Cause 52 of 2009** now consolidated to the present file?

Section 55 and 71 of the Law of Succession Act Cap 160 requires that the grant of representation be confirmed before the distribution of the estate is effected by the administrators to the beneficiaries.

The effect therefore is that, the grant issued to the Respondent on 3rd April, 2009 and confirmed on 25th May, 2010 paved way for the distribution of the deceased's estate amongst the Respondents.

To confirm the present grant by the Applicant will be to aid and spur acrimony, conflict and protracted litigation amongst the grand children of the deceased. Further, it would create utter confusion as there would be in place two (2) valid and legal confirmed grants for distribution of the estate of the deceased to 2 different groups of persons. It would lead to chaos.

The Applicant is a grandchild to the deceased through the deceased's sister and the Respondents are grandchildren of the deceased through the deceased's brother. They all have equal rights over the deceased's estate equally. To do any other act than include the Applicant would lead to miscarriage of justice to the Applicant.

The Court is mindful of the fact that the distribution of the estate may have taken place a long time ago. However, the Respondents ought to have included the Applicant in the list of beneficiaries and allocated her a share of the deceased's estate in the first place to avoid inconvenience.

In the absence of doing so, they can only bear the inconvenience which would facilitate the Applicant's right to obtain a share of the deceased's estate.

Taking into account the above facts and circumstances the Court will not confirm the grant of 3rd June 2010. Instead, since both **Court files 52 of 2008 – Thika Law Courts and 2739 of 2008** have been consolidated, the confirmed grant issued in **Succession Cause 2739 of 2008 of 25th May, 2010** shall and is rectified under **section 43 of the Law of Succession Act Cap 160** to read as follows;

a. Beneficiaries of the deceased's estate are;

1. Hellen Muthoni Kuria
2. Simon Njoroge Gitau
3. Washington Kariuki Njoroge
4. John Mwangi Gatau
5. Virginia Nyambura Gatau

b. Assets/Description of properties

Kahuti Loc 10/2540

c. Shares of Heirs

Jointly and equally amongst all beneficiaries.

FINAL ORDERS

1. *The grant of 9th October, 2009 issued in Thika Law Courts Succession Cause 52 of 2009 is not confirmed*
2. *The grant of 3rd April, 2009 confirmed on 25th May, 2010 in Nairobi High Court Succession Cause 2739 of 2008 is rectified to include the Applicant as a beneficiary and the assets of the deceased's estate to be shared equally amongst all beneficiaries.*
3. *The alleged Purchaser one Elishiba Waithira Maina cannot inherit from the deceased's estate as she is not a relative of the deceased. Secondly, in the Court files, there are no documents to prove that she had an interest in the deceased's estate as a Purchaser.*

Therefore she cannot and will not benefit from the estate of the deceased.

4. *The parties may engage the services of a surveyor to apportion the land to enable each beneficiary have an equal portion, without interfering with developments, buildings etc in the land.*

Each beneficiary who has set up permanent structures they should be left intact but a portion hived off from the undeveloped portion.

5. *No orders as to costs.*

READ AND SIGNED IN OPEN COURT AT NAIROBI THIS 25TH DAY OF SEPTEMBER, 2015

M. MUIGAI

JUDGE

In the presence of:

Counsel for the Applicant