



**REPUBLIC OF KENYA**

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

**SUCCESSION CAUSE NO. 2068 OF 2011**

**IN THE MATTER OF THE ESTATE OF JEREMIAH NGUNJIRI KARARA (DECEASED)**

**MICHAEL MUIRURI NGUNJIRI.....1<sup>ST</sup> APPLICANT**

**ONESMUS MBUTHIA NGUNJIRI.....2<sup>ND</sup> APPLICANT**

**GEOFFREY MWANGI NGUNJIRI.....3<sup>RD</sup> APPLICANT**

**TERESIA NJERI CHAHIRA.....4<sup>TH</sup> APPLICANT**

**VERSUS**

**JULIUS MBUGUA NGUNJIRI.....1<sup>ST</sup> RESPONDENT**

**GEOFFREY KIBE NGUNJIRI.....2<sup>ND</sup> RESPONDENT**

**MARY WANGUI THAITURU.....3<sup>RD</sup> RESPONDENT**

**HANNAH WANJIRU NGUNJIRI.....4<sup>TH</sup> RESPONDENT**

**RULING**

1. The deceased Jeremiah Ngunjiri Karara died intestate on 22/6/1981 at Kariobangi in Nairobi. He was survived by two wives and 22 children. On 21<sup>st</sup> September 2011 James Karara a son to the deceased petitioned for grant of letters of administration. The same was gazette in the Kenya Gazette on 16<sup>th</sup> December 2011 and he was subsequently issued with the grant of letters of administration on 7<sup>th</sup> February 2012. On 24<sup>th</sup> June 2013 the administrator applied for confirmation of the said grant. On 11<sup>th</sup> July 2013 Michael Muiruri Ngunjiri filed a protest to the said confirmation Justice Musyoka on 22<sup>nd</sup> July 2013 ordered that the said confirmation be heard orally. On 30<sup>th</sup> September 2013 the said grant was confirmed to the effect that;
  - i. ***Kiganjo/Mundoro/989*** go to Hannah Wanjiru Ngunjiri, Gathoni Jeremiah, Road Reserve - be shared out as per the oral will of the deceased.
  - ii. City Council Nairobi Plot No. 165 (Kariobangi) – Hannah Wanjiru Ngunjiri - whole
  - iii. Plot No. 16 Ndundu Market – James Karanja J. Karanja- ½ share, with Francis Jeremiah Karara, David Mbuthia Ngunjiri, Justus Njuguna Ngunjiri sharing the other ½ share.
2. Subsequent to the confirmation of the said grant Michael Muiruri Ngunjiri brought the current

application dated 12<sup>th</sup> March 2014. The application is brought under Section 74 of the Law of Succession Act Cap 160 and Rule 43 of the Probate and Administration Rules. He seeks the following orders;

- i. That the beneficiary Hannah Wanjiru Ngunjiri be restrained by way of injunction from dealing with or from disposing off or in any other way whatsoever interfering with the applicant's quiet enjoyment of portions of land on L.R. Kiganjo/Mundoro/989 currently occupied by

Michael Muiruri Ngunjiri - 2.35 acres

Julius Mbugua Ngunjiri - 2.35 acres

Onesmus Mbuthia Ngunjiri - 2.35 acres

Godffrey Mwangi Ngunjiri - 2.35 acres

Godffrey Kibe Ngunjiri - 2.35 acres

- ii. That Hannah Wanjiru be restrained by way of injunction from disposing off or charging or otherwise parting with possession of plot known as plot number 165 Kariobangi.
- iii. That the letters of administration issued to the said James Karara J. Karara on the 7<sup>th</sup> February 2012 and confirmed on 30<sup>th</sup> September 2013 be rectified to the following of Hannah Wanjiru Ngunjiri in the following proportions.

Michael Muiruri Ngunjiri - 2.35 acres

Julius Mbugua Ngunjiri - 2.35 acres

Onesmus Mbuthia Ngunjiri - 2.35 acres

Godffrey Mwangi Ngunjiri - 2.35 acres

Godffrey Kibe Ngunjiri - 2.35 acres

That plot 165 Kariobangi be sold at market value and the proceeds be distributed amongst the children of Hannah Wanjiru Ngunjiri and Hannah Wanjiru Ngunjiri in equal shares.

3. The application was based on grounds that the named beneficiary Hannah Wanjiru Ngunjiri is ill and too old to understand and some of her children are taking advantage of her condition and there is a likely hood the land on which the applicant's homestead is based, stands to be transferred to a few children or sold hence disinheriting the applicants, that some beneficiaries have approached Hannah Wanjiru Ngunjiri to transfer plot 165 Kariobangi at less than the market rate. That the distribution as made disinherits the applicants and it is unfair and unconstitutional.
4. The applicant's in his supporting affidavit depones that the deceased had four wives two of whom are deceased. Hence his estate devolved into four households as follows.

#### **First House**

Wangari Jeremiah Ngunjiri (deceased)

James Karara J. Karara

Alice Njeri Mwangi

Benedete Wangui Githua

Salome Waithera Githua

**Second House**

Ann Wairimu Ngunjiri (deceased)

Alice Njeri Kanyongo

Felista Wanjiru Ngunjiri

Gabriel Ngubia Jeremiah

David Mbuthia Ngunjiri

Justus Njuguna Ngunjiri

Mary Muthoni Waithaka

Francis Jeremiah Karara

**Third House**

Hannah Wanjiru Ngunjiri (Widow)

Michael Muiruri Ngunjiri

Julius Mbugua Ngunjiri

Onesmus Mbuthia Ngunjiri

Geoffrey Kibe Ngunjiri

Geoffrey Mwangi Ngunjiri

Teresiah Njeri Chahira

Mary Wangui Thaituru

**Fourth House**

Gathoni Jeremiah (widow)

Magdalina Wangari Karara

Joseph Mbuthia

Edward Ndotono Ngunjiri

Rose Wairimu Mburu

5. He reiterated that the grant of letters of administration was issued to James J. Karara on 7<sup>th</sup> February 2012 and confirmed on 30<sup>th</sup> September 2013. That the said property known as ***L.R. Kiganjo/Mundoro/989*** in the said certificate of confirmation was to be shared equally among the 3<sup>rd</sup> and 4<sup>th</sup> house. That Hannah Wanjiru Ngunjiri in the 3<sup>rd</sup> House is aged 90 years and unable to comprehend matters around her. Hannah was also given City Council of Nairobi plot 165 in

- Kariobangi North. That the applicants are apprehensive that their mother will disinherit them as she only listens to Julius Mbugua Ngunjiri and Geoffrey Kibe Ngunjiri whose plans are to convince her to sell plot 165 and their 50% share of *L.R. Kiganjo/Mundoro/989* to them at a throw away price thus disinheriting them. That *L.R. Kiganjo/Mundoro/989* was given to them as a gift by their late father and they have constructed permanent homesteads therein. That their mother can no longer take care of herself and is currently living with Onesmus Mbuthia Ngunjiri and are apprehensive that unless the properties given to their mother is distributed amongst them they stand to lose their livelihood and sought the rectification of the certificate of confirmation of grant to accommodate all beneficiaries in the third house with each getting an equal share adding that they were agreeable for plot no. 165 being sold and the proceeds shared amongst the 9 of them.
6. The application was opposed by Geoffrey Kibe Ngunjiri in an affidavit dated the 28/1/2015 deponed that the application is incompetent as the court has been rendered functus officio as the estate of the deceased has already been distributed and properties vested in new proprietors. That the application fails to allude to any error in names, descriptions or in setting forth the time and place of the deceased hence the certificate as confirmed cannot be rectified and the application seeks to redistribute the estate of the deceased adding that redistribution of the estate can only be done before the property vests in a new proprietor. That the redistribution of *Title No. Kiganjo/Mundoro 989* has the effect of disinheriting its lawful heirs. He further added that the treatment notes adduced by the applicants do not in any way state that the said Hannah Wanjiru Ngunjiri is of sound mind and capable of handling her own affairs and that Hannah Wanjiru is not a dependant on any of them. He avers that the allegation that *L.R. No. Kiganjo/Mundoro/989* was gifted to them by the deceased is false and that the issues they are raising now ought to have been raised before the confirmation of the grant.
  7. The applicant in reply to the said replying affidavit reiterated the contents of the application. He avers that the court has not been rendered functus officio and that Hannah Wanjiru Ngunjiri has only a life interest over 50% of *L. R. Kiganjo/Mundoro/989* and City Council of Nairobi Plot no. 165 Kariobangi and that it is an error that the deceased's estate to be transferred to his 92 year old widow.
  8. The matter come up for hearing on 11<sup>th</sup> March 2011. Mrs. Ndungu for the applicant reiterated the contents of the said application. She further alleged that their fears had been confirmed by the sale of the said property by the 4<sup>th</sup> respondent to 2 of the respondents with Geoffrey holding the sale proceeds. That each of the brothers has 2.35 acres of the said land and have been cultivating there. That in the absence of the life interest they could be disinherited by the brothers. That it shows that Hannah Wanjiku and Gathoni Jeremiah are proprietors. She added that there is no law that gives a widow absolute inheritance. That the land is occupied and cultivated by the sons and hence they have locust to bring the instant application and that it is in the interest of justice that an injunction be granted.
  9. Mr. Njoroge for the respondents argued that there was no estate of the deceased as the properties of the deceased had already been transferred and the court can only deal with the said estate if the same is still registered in the names of the deceased. It was submitted that since the transfer has been effected a redistribution cannot occur. That the applicants executed a consent which declared that that was their wish and if at all they had been given the same as a gift by the deceased they could not have allowed the same to go to the 4<sup>th</sup> respondent. That the application does not provide for the widow of the deceased in the said redistribution but seeks to disinherit her. That the redistribution is contrary to section 38 of the Law of Succession Act Cap 160 and that what the applicant is seeking is for this court to break the law as there is no basis upon which rectification can issues.
  10. In reply it was argued that under Rule 43 there is an error in the said certificate as it does not indicate that the 4<sup>th</sup> respondent holds a life interest on the said property. She distinguished the two cases as not being relevant to the current case. Further that the grant is not vested on Hannah. That the court has jurisdiction and can grant an injunction adding that the consent list just has names it did not indicate who gets what.
  11. I note from the Court record that on the 7<sup>th</sup> of March 2014 Justice Kimaru made an order as follows **“the administrator is hereby allowed to proceed with the subdivision of the suit parcel of land, L.R. No. Kiganjo/Mundoro/989 into the portions. The Court shall distribute**

**the portion due to the house of Hannah Wanjiru Ngunjiri to the beneficiaries on 9/6/2014. All beneficiaries to attend Court.**’ This did not happen the Court is therefore not functus officio as claimed by the respondents.

12. It is not in dispute that the parties in this matter are all named beneficiaries of the deceased. The grant was granted and confirmed on 23rd September 2013 listing **L. R. Kiganjo/Mundoro/989, City Council of Nairobi Plot No. 165 (Kariobangi), Plot No.16 Ndundu Market** as the properties surviving the deceased. The properties were distributed as follows; **Kiganjo/Mundoro/989** going to Gathoni Jeremiah, road reserve. **City Council of Nairobi plot 165 (Kariobangi)** went to Hannah Wanjiru Ngunjiri while plot No. 16. Ndundu Market was to be shared equally by James Karanja Karara getting ½ share while the other share was shared out to Francis Jeremiah Karara, David Mbuthia Ngunjiri and Justus Njuguna Ngunjiri. The applicants in the instant application are beneficiaries in the third house and their application pertains to the share that was distributed to their house. In the said distribution though not specifically stated the share of the said properties were held by representatives in place of the other beneficiaries which I believe they held in trust for the other beneficiaries in the said house. I find that failure to indicate that Hannah Wanjiru Ngunjiri holds the said land in trust for the other beneficiaries is not fatal though it’s as description that should have been indicated in the confirmed grant now that all the parties are in this one portion of land and have settled there. Further I note that Hannah Wanjiru Ngunjiri obtains only a life interest in the estate of her deceased husband’s estate as provided under Section 37 of the Law of succession Act Cap 160 , the same provides that, **“A surviving spouse entitled to a life interest under the provisions of section 35 or 36, with the consent of all co-trustees and all children of full age, or with the consent of the court, may, during the period of the life interest, sell any of the property subject to that interest if it is necessary for his own maintenance: Provided that, in the case of immovable property, the exercise of that power shall always be subject to the consent of the court.”**{emphasis mine}
13. The applicants argue that the 4<sup>th</sup> respondent is advanced in age and is currently being taken care of by some of her children as a result of which she has sold to them part of the said property. The respondents have consequently proceeded to transfer the said property into their names in a bid to frustrate the recovery process. In regards to the prayer for injunction sought by the applicant I find that the same is justified in barring the sale of the said land. I therefore restrain Hannah Wanjiru Ngunjiri from disposing off in any way whatsoever and interfering with the applicant’s quiet possession in **L. R. No. Kiganjo/Mundoro/989**.
14. A probate Court is a Court of equity, bearing in mind the provisions of section 37 the Law of Succession Act Cap 160 I find that the applicants were not consulted before the 4<sup>th</sup> respondent sold plot 165 to some of her children while disinheriting others as such I find that the said sale was illegal and order that the same be invalidated and the title reverted back to the original owner. I further order that Plot 165 Kariobangi be sold at the market value and the proceeds be distributed between the widow and her children in equal shares. A valuation can be undertaken at the cost of the applicants. I further order that the letters of administration intestate issued to the said James Karara J. Karara on 7<sup>th</sup> February, 2012 and confirmed on 30<sup>th</sup> September, 2013 be rectified in the following respects as provided for by Rule 43 (1) of the Probate and Administration Rules. 50% of **L. R. Kiganjo/Mundoro/989** be distributed to Hannah Wanjiru Ngunjiri and her children equally. Costs in the cause. It is so ordered.

Dated, signed and delivered this 25<sup>th</sup> day of **September** 2015.

**R. E. OUGO**

**JUDGE**

In the presence of:-

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

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

.....**Court Clerk**