



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

SUCCESSION CAUSE NO. 411 OF 2008

**IN THE MATTER OF THE ESTATE OF THE LATE DANIEL NJOROGE MBUGUA
(DECEASED)**

HANNAH MWERU NJOROGE.....1ST ADMINISTRATOR

LABAN MBUGUA NJOROGE.....2ND ADMINISTRATOR

IBRAHIM KIMIRI NJOROGE.....3RD ADMINISTRATOR

VERSUS

REBECCA WANJIRA.....OBJECTOR

JUDGMENT

1. The 1st, 2nd and 3rd administrators are the widow and sons of Daniel Njoroge Mbugua (the deceased) respectively. They were granted Letters of Administration of his estate on 11th November, 2008. They applied for confirmation by way of the Summons for confirmation of grant dated 17th June, 2009.
2. The objector is the first daughter of the deceased. She filed an objection dated 5th November, 2010 against the confirmation of the grant on the grounds that she had not consented to the confirmation of the grant, that all the assets of the deceased had not been disclosed in the application for confirmation of the grant and that the estate should be divided equally among all the beneficiaries and not as proposed by the administrators.
3. At the hearing of the objection, the objector told the court that she did not know the full extent of the deceased's estate or whether all the assets were included in the consent for confirmation of the grant. She did not offer any evidence to support her contention that some assets had been left out or satisfactorily address the 1st administrator's contention that all the assets of the deceased had been distributed. The objector's concern and which this court has been asked to determine was with regard to the distribution of the estate.
4. The objector testified that she had not consented to the division of the estate in the manner that was proposed by the administrators. It was her case that the proposed manner of distribution did not accord her a fair share and she therefore proposed that the estate be divided equally among the 12 surviving beneficiaries of the deceased as one of the deceased's children has passed away.
5. She denied that she ever attended a family meeting when the issue of division of the estate was discussed and agreed upon by the beneficiaries and that she wrote her name the minutes of that meeting

as an acknowledgment that she had agreed with the rest of the family. She also denied that she signed the consent to the confirmation of the grant dated 2nd October, 2011 which adopted the mode of distribution that had been agreed upon in the meeting. She contested the signatures in both the minutes and the consent to confirmation of the grant and relied on the affidavit of protest where she had appended her valid signature.

6. She therefore asked the court to disregard the agreement of the family as per the minutes of 2nd October, 2011 as distribute the property equally among all the beneficiaries.

7. The Administrators' case was that the family agreed on how to distribute the property in a meeting held 2nd October, 2011. PW1, the 1st administrator testified that the Objector was present in the meeting, and agreed with the decision of the rest of the family. She appended her name in the minutes of the meeting and on the consent to confirmation of the grant also dated 2nd October, 2011 which adopted the decision of the family. It was PW1's case that the estate should be divided in the manner that was agreed upon by all the beneficiaries. PW1 also refuted the claim that some assets of the deceased had been excluded. She testified that all the properties including those cited in the objection have been captured in the consent to confirm the grant.

8. PW2 was the secretary in the family meeting held on 2nd October, 2011. She wrote the minutes and confirmed that they captured the agreement of the family with regard to distribution of the estate of the deceased. The minutes were read out to the family and each member present signed against them. PW2 saw the objector writing her name in the minutes adopting them.

9. When cross examined, PW2 conceded that not all the properties of the deceased were distributed during the meeting. She also testified that the general consent to distribution of the property which was filed in support of the summons for confirmation of the grant was prepared by counsel in terms of the agreement of the family. It was signed on the same day of the meeting.

DETERMINATION

10. The parties filed written submissions where they summarized their respective cases. As stated earlier the issue for determination is on the mode of distribution of the estate of the deceased.

11. The deceased died intestate and was survived by one spouse and 11 children. In the case of **Justus Thiora Kiugu & 4 others** V. **Joyce Nkatha Kiugu & another**, [2015] eKLR, the Court of Appeal at Nyeri was asked to determine the question of distribution of the estate of the deceased under similar circumstances. The learned judges held as follows-

“We urged the parties in this appeal to attempt and make peace among themselves and to nurture harmony and cordial relationship among themselves because the distribution of the estate of the deceased in this matter, as in every case of a deceased person in Kenya, is governed by the Law of Succession Cap 160 of the Laws of Kenya and the Constitution. The distribution of the deceased's estate is not governed by whims, caprice nor is it governed by retrogressive and biased opinions against the aged and the female gender.

It is necessary for us to revisit the provisions of Article 159 (c) of the Constitution of Kenya which provides:

“In exercising Judicial authority, the courts and tribunals shall be guided by the following principles:

a.

b.

c. Alternative forms of dispute resolution including reconciliation, mediation, arbitration and traditional disputes resolution mechanisms shall be promoted,subject to clause (3)”.

We have revisited the foregoing provision because we urged the parties herein to reconcile and if they reach an agreement, we as a court would adopt their written consent to settle this matter. We did this because we appreciate that an estate of a deceased person who died intestate leaving one spouse and children like in this case of M’Ikiungu Mwirichia cannot legally be distributed in any other way other than the parties agreeing among themselves and filing a consent, or by the court following the provisions of Section 35 of the Law of Succession. In the event that parties agree and they record consent on the mode of distribution, the court has no choice but to adopt the consent and make it an order of the court. Short of a written consent on the mode of distribution, the court has no option but to distribute the estate of the deceased as per the provisions of Section 35 of the Law of Succession which makes provisions for an intestate who has left one surviving spouse and child or children.”

12. In the instant case, the contention of the Administrators was that the beneficiaries met and agreed on how to divide the property of the deceased. This agreement is reflected in the minutes of the meeting which all present, including the objector, signed. They therefore urged the court to adopt this agreement which is also contained in the consent to the summons of the confirmation of the grant dated 2nd October, 2011.

13. The objector instituted these proceedings before the family meeting when they agreed on the mode of distribution. In her application she proposed that the property should be divided equally among all the beneficiaries. She has maintained this stance and has denied attending the meeting and signing both the minutes and the consent dated 2nd October, 2011. She contested the validity of the signatures on the documents.

14. After considering the evidence of the parties, I find that there is doubt as to whether the objector attended the meeting or signed the documents that reflected the agreement of the parties in that meeting. I am therefore inclined to find that ultimately the objector did not agree to the distribution of the property in the manner proposed in the meeting held on 2nd October 2011 and in the consent signed by the parties on the same date.

15. The facts in this matter fell squarely on four corners with the circumstances obtaining in the case of **Justus Thiora Kiungu & 4 Others V. Joyce Nkatha Kiugu & Another**, [2015 eKLR] quoted above.

16. In line with that decision and in order to foster family harmony and fairness, I will open a short window of negotiation among the beneficiaries. I direct that a meeting be held within 14 days hereof to incorporate the views of the objector as to the distribution. A consent if reached be filed for adoption by court.

17. In default of an agreement on distribution, the court shall proceed to distribute the estate as provided for under **Section 35 of the Law of Succession Act**.

18. This being a family matter, each party is to bear its own costs. The mention date be taken for further directions.

Dated, Signed and Delivered at Nakuru this 17th day of November, 2015.

A. K. NDUNG’U

JUDGE