



**REPUBLIC OF KENYA**

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

**FAMILY DIVISION**

**SUCCESSION CAUSE NO.504 OF 2001**

**IN THE MATTER OF THE ESTATE OF THE LATE GEORGE NJUGUNA NYAMU *alias*  
NJUGUNA NYAMU (DECEASED)**

**IRENE WARIARA NJUGUNA.....  
APPLICANT**

**VERSUS**

**PETER NYAMU NJUGUNA**

**JOHN MAINA NJUGUNA**

**NANCY WANJIKU NJUGUNA.....RESPONDENTS/ADMINISTRATORS**

**R U L I N G**

On 28<sup>th</sup> January 2014, the four (4) administrators of the estate of the deceased presented to this court summons seeking to have the grant that was issued to them on 3<sup>rd</sup> May 2004 confirmed. Annexed to the application, was a schedule in which the administrators made proposals on how the estate of the deceased was to be distributed. All beneficiaries save Irene Wariara Njuguna (the applicant) appeared before the court on 30<sup>th</sup> January 2014. This court perused the file and noted that the said Irene Wariara Njuguna had filed affidavit of protest to the distribution proposal that was made by the administrators. She had no objection to the proposed distribution save for the distribution of parcel No.Dagoretti/Kangemi/T350. The court directed the administrators to serve the said Irene Wariara Njuguna to appear before court on 3<sup>rd</sup> February 2014. She was duly served. She appeared before the court. From the oral presentation made before court, it became apparent that the said Irene Wariara Njuguna was opposed to the distribution of the particular property because she wanted to inherit the main house on the suit property which the administrators had proposed would be inherited by John Maina Njuguna. In their proposal, the administrators gave the said Irene Wariara Njuguna equal shares in the said parcel of land. It was explained to the court that apart from the main house, there were several single room rental premises which had been erected on the suit premises. The administrators were prepared to give the said Irene Wariara Njuguna the choice of specific single rooms as she may desire. Irene Wariara Njuguna was however adamant that she should to be allowed to inherit the main house. This court determined that indeed the administrators had made a fair proposal in regard to how the estate of the deceased was to be distributed. It confirmed the grant in terms of the proposal that was made by the administrators. However, it granted Irene Wariara Njuguna three (3) months to give vacant possession of the main house to John Maina Njuguna.

The Applicant was aggrieved by that decision of the court. She filed an application on 14<sup>th</sup> February 2014 seeking to have the said confirmation of grant annulled. Her basic complaint was that the beneficiaries of the estate of the deceased had not agreed on the mode of distribution of the properties that comprised the said estate. In particular, she was aggrieved that the court had not taken into consideration the contribution that she had made towards the development of the particular property. In the premises therefore, she was of the view that the court failed to take into consideration all the facts of the case before reaching determination distributing the estate of the deceased. The application was opposed. John Maina Njuguna filed a replying affidavit in opposition to the application. Irene Wariara Njuguna filed an

affidavit in further support of the application. In her application, the Applicant seem to suggest that the dispute regarding the distribution of the particular property had been considered and resolved by the Assistant County Commissioner, Kangemi Division.

During the hearing of the application, this court heard rival oral submission made by Mr. Kalwa for the Applicant and Njoki Gachini for the Administrators. This court has carefully considered the said submission. As stated earlier in this ruling, it is apparent that the Applicant was aggrieved by the decision of this court in accepting the mode of distribution proposed by the administrators. The application made herein is neither an appeal nor an application for review. This court is therefore at loss as to what prayer the applicant craves for. However, it is clear from her submission that the Applicant is of the view that the court did not take into consideration her views before determining that she should give vacant possession of the main house in the suit premises. Contrary to her assertion, this court indeed took into consideration the views of all the beneficiaries before it adopted the proposal made by the administrators. Among the documents that the court relied on to reach that decision is minutes of the meeting held at the Assistant County Commissioner's office, Kangemi Division on 22<sup>nd</sup> January 2014 where it was agreed *inter alia*, under minute 03/22/2014 on the sharing of the suit property (i.e. Dagoretti/Kangemi/T350). It was agreed that the same was to be shared between three (3) beneficiaries, namely Nancy Wanjiku Njuguna, Irene Wariara Njuguna and John Maina Njuguna. It was further decided as follows:

***“Notice that John being the last born in the family according to the Kikuyu culture becomes automatic inheritance (sic) of the father’s living house, further to this the deceased had approved of it before death, therefore all members unanimously agreed to leave the main house to John on condition that he compensates Irene for all renovation work done, arrangements for compensation was to be made between the two.”***

It was therefore clear that contrary to the thrust of the Applicant's application, the Assistant County Commissioner did not made a ruling in her favour. Indeed, the main house was to be inherited by John Maina Njuguna. When the Applicant opposed the application for confirmation of grant on the same claim that was dismissed by the Assistant County Commissioner, it was obvious to this court that the Applicant was being obstructive of other beneficiaries from accessing their inheritance. The Ruling of this court stands. The Applicant is required to give vacant possession of the main house to the said John Maina Njuguna within the period stipulated in the Order of the court of 3<sup>rd</sup> February 2014. She shall present to the court the cost of renovations that she has undertaken in the main house for appropriate compensation by John Maina Njuguna. She shall present evidence of such renovation. There shall be no orders as to costs.

**DATED AT NAIROBI THIS 28<sup>TH</sup> DAY OF MARCH, 2014**

**L. KIMARU**

**JUDGE**