



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NYERI
SUCCESSION CASE NO. 180 OF 1999
IN THE MATTER OF THE ESTATE OF
JOHANA WANJAU KAHUBI..... DECEASED
AND
NANCY MUMBI WANJAU.....PETITIONER

JUDGMENT

BACKGROUND

1. The Respondent NANCY MUMBI WANJAU applied for grant of letters of administration of the estate of JOHANA WANJAU KAHUBI alias WANJAU KAHUBI which grant was confirmed on 30th June 2004 in which LR No.NYERI/NAROMORU/180 was shared equally between the following:

1. NANCY MUMBI WANJAU
2. JOSEPH KAHUMBI WANJAU
3. JAMES WAGURA WANJAU
4. LUCY NYAGUTHII WANJAU
5. NDIRITU WANJAU
6. CHARLES WACHIRA WANJAU
7. DAVID KINYUA WANJAU
8. REGINA WANJIRU WANJAU

2. On 12th August 2008 the petitioner NANCY MUMBI WANJAU moved the court under rule 43(1) P&A Rules for rectification of grant which application was allowed on 18th November 2008 and the grant rectified as follows:

1. NANCY MUMBI WANJAU - 3.252 Ha

2. JOSEPH KAHUMBI WANJAU - 0.674 Ha
3. JAMES WAGURA WANJAU - 0.674 Ha
4. LUCY NYAGUTHII WANJAU - 0.674 Ha
5. NDIRITU WANJAU - 0.674 Ha
6. CHARLES WACHIRA WANJAU- 0.674 Ha
7. DAVID KINYUA WANJAU - 0.674 Ha
8. REGINA WANJIRU WANJAU - 0.674 Ha

3. On 31st July 2012 the applicant herein DAVID KINYUA WANJAU filed an application for revocation or annulment of the said grant under section 76 of the Law of Succession Act and Rule 4(1) and 73 of the P&A Rules and prayed that the grant of letters of administration granted to the respondent on 5th June 2000 confirmed on 30th June 2004 and rectified on 18th November 2008 be rectified or annulled or in the alternative the respondent do restrain the grant in line with one that has been issued on 30th June 2004.

4. That application was allowed by consent of the parties on 11th October 2012 and both respondent and the applicant appointed joint administrators of the estate of JOHANA WANJAU with view to apply for confirmation of the grant notwithstanding six (6) months.

5. On 3rd October 2012 the Respondent filed an application for confirmation of grant and in the list of beneficiaries named the following:

- a. CHARLES WACHIRA WANJAU
- b. JAMES WAGURA WANJAU
- c. DAVID KINYUA WANJAU
- d. REGINA WANJIRU WANJAU
- e. TIRATISON NDERITU WANJAU
- f. LUCY NYAGUTHII WANJAU
- g. JOSEPH KAHUBI WANJAU
- h. NANCY MUMBI WANJAU
- i. EUNICE WANGU WANJAU
- j. PURITY MUTHONI WANJAU
- k. AGNES WANGARI WANJAU

6. In her mode of distribution the respondent proposed as follows:

1. CHARLES WACHIRA WANJAU - 0.67 Ha
2. JAMES WAGURA WANJAU - 0.674 Ha
3. DAVID KINYUA WANJAU - 0.674 Ha

4. REGINA WANJIRU WANJAU - 0.674 Ha
5. TARACISIO NDERITU WANJAU - 0.674 Ha
6. LUCY NYAGUTHII WANJAU - 0.674 Ha
7. JOSEPH KAHUBI WANJAU - 0.674 Ha
8. NANCY MUMBI WANJAU
9. EUNICE WANGU WANJAU 3.252 Ha
10. PURITY MUTHONI WANJAU
11. AGNES WANGARI WANJAU

7. On 17th October 2012 the applicant filed an affidavit of protest in which he stated that the initial grant confirmed on 30th June 2004 revoked was the most equitable distribution notwithstanding the fact that some married daughters had not been provided for and that the applicant to application for confirmation fraudulently rectified the revoked grant by including the alleged married daughters. He further stated that on the said property LR NYERI/NAROMORU/180 stands a hotel/hostels which the family should benefit from.

8. The protestor therefore proposes that the subject property be distributed as follows:

1. NANCY MUMBI WANJAU - 1 acre
2. JOSEPH KAHUBI WANJAU - 2 acres
3. JAMES WAGURA WANJAU - 2 acres
4. LUCY NYAGUTHII WANJAU - 2 acres
5. TARACISIO NDERITU WANJAU- 3 acres
6. CHARLES WACHIRA WANJAU- 2 acres
7. DAVID KINYUA WANJAU - 2 acres
8. REGINA WANJIRU WANJAU - 2 acres
9. PURITY MUTHONI WANJAU - 1 acre
10. AGNES WANGARI WANJAU - 1 acre
11. EUNICE WANGU WANJAU - 1 acre
12. HOSTEL /HOTEL - 1½ acre

(to be registered in the names of NANCY MUMBI WANJAU and DAVID KINYUA WANJAU in trust)

9. Directions were given that the protest be heard by way of affidavit evidence and written submissions which have now been filed.

SUBMISSIONS

PROTEST

10. On behalf of the protest it was submitted that the mode of distribution proposed by the protestor is the most equitable taking into account all the beneficiaries taking into account the fact that the original grant had been confirmed on 30th June 2004 and the property distributed to eight (8) people excluding the married daughters.
11. It was submitted that there is no justification for the applicant and three married daughters to be given 3.252 hectares which will amount to 2 acres each. It was further submitted that the Hostel/Hotel was to benefit all the beneficiaries but currently only two beneficiaries JAMES WAGURA WANJAU and JOSEPH KAHUBI WANJAU are benefiting from the proceeds of the same. He therefore proposes that the same be registered separately.

RESPONDENT

12. On behalf of the Respondent it is submitted that each of the sons and daughters should get 0.67 hectares while the respondent and the daughters get 3.252 hectares jointly since each of the children are equal. It is submitted that the Hostel/Hotel should be treated as the deceased personal property of which the widow should have absolute control.
13. It was further submitted that the debt of Ksh. 200,000/- can be recovered as a debt.

ISSUES FOR DETERMINATION

14. From the affidavit evidence and the written submissions the only issue for determination is which is the most equitable mode of distribution of the estate of JOHANA WANJAU KAHUBI?
15. There is no dispute as to the beneficiaries of the said estate and there is also no dispute that the initial grant was confirmed based on a consent that the initial eight beneficiaries were to share equally. The only thing which has changed is that the proposed mode of distribution by the respondent now includes three married daughters who had not been provided for and the proposed mode of distribution by the protestor include setting aside land for the hotel/hostel and giving additional acreage to TRACISIO NDERITU WANJAU for an alleged debt of Ksh. 200,000/-
16. I must point out as I have stated before that disputes of this nature are best resolved by way of oral evidence as it is clear that the protestor has adduced untested evidence through his written submissions which includes the alleged intention of the deceased as regards the married daughters and the debt of Kshs. 200,000/-

DETERMINATION

17. Be that as it may I find that all the children of the deceased as identified rank equal and are therefore entitled to equal share of the estate their marital status notwithstanding. On the issue of the hostel/hotel I would agree with the submissions by the protestor that each and every beneficiaries is entitled to benefit from the same and so as to avoid the conflict of who should take the part where the same is situated I hereby order that 1½ acre thereof be set aside for the hostel/hotel to be registered in the name of the two administrators herein to hold in trust for all the beneficiaries and a management company in which all the beneficiaries are shareholders be registered to manage the hostel/hotel for the benefit of all the beneficiaries.
18. On the mode of distribution and taking into account the initial consent I hereby order that the remaining acreage be distributed equally amongst the identified eleven (11) beneficiaries of the estate of the deceased.
19. This being a family dispute each party shall bear their own cost.

Dated, signed and delivered at Nyeri this 28th day of March 2014.

J. WAKIAGA

JUDGE

Mr. W. Theuri for the Respondent

No appearance by Mr. Kimunya

Protestor present.

Court: Judgment is read in open court in the presence of Mr. W. Theuri and in the presence of the protestor but in the absence of Mr. Kimunya

J. WAKIAGA

JUDGE